

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4 UNITED STATES OF AMERICA,)
5 Plaintiff,) Case No. 3:12-cv-02265-SI
6 v.)
7 THE CITY OF PORTLAND,) June 6, 2019
8 Defendant.) Portland, Oregon

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12 STATUS CONFERENCE

13 TRANSCRIPT OF PROCEEDINGS

14 BEFORE THE HONORABLE MICHAEL H. SIMON

15 UNITED STATES DISTRICT COURT JUDGE
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(June 6, 2019)

P R O C E E D I N G S

(Open court:)

THE CLERK: Your Honor, this is the time set for a status conference in civil case 12-2265-SI, United States of America versus City of Portland, et al.

Could I have counsel, beginning with plaintiff, please identify yourself for the record.

MR. GEISSLER: Jonas Geissler, USDOJ Civil Rights Division for the United States, Your Honor.

THE COURT: Good morning.

MR. HAGER: Jared Hager, Assistant U.S. Attorney, for the United States.

THE COURT: Good morning.

MS. CHAMBERS: Kristen Chambers, counsel for AMAC.

THE COURT: Welcome. Good morning.

MR. KARIA: Anil Karia, Portland Police Association.

THE COURT: Good morning.

MS. REEVE: Good morning. Your Honor, Tracy Reeve for the City of Portland.

THE COURT: Good morning.

MR. VANNIER: Good morning, Your Honor. Denis Vannier for the City of Portland.

THE COURT: Good morning and welcome.

1 All right. We are here for a periodic status
2 conference on the settlement in the case of United States
3 versus the City of Portland. I welcome all the parties here,
4 including the amicus. I welcome the members of the public, who
5 are in attendance. I welcome our city officials and elected
6 officials and other dignitaries as well.

7 At the joint request of all the parties, I am going
8 to proceed in the following fashion this morning: First, I'll
9 hear from the United States, the plaintiff in the case, on the
10 pending amendment relating to the Portland Committee on
11 Community Engaged Policing. Then I'll hear the City's
12 presentation on that issue, followed by comments from the
13 Portland Police Association, and the Albina Ministerial
14 Alliance Coalition for Justice and Police Reform, and then the
15 Mental Health Alliance. Following that, I'll hear from a
16 representative or representatives from the Portland Committee
17 on Community Engaged Policing itself followed by any public
18 testimony.

19 Let me tell you there is a sign-up sheet outside the
20 courtroom. It has been reported to me that so far we have
21 requests by the following members of the public to speak, and
22 they will all be invited and welcome:

23 On behalf of Portland Copwatch, Mr. Dan Handelman,
24 Regina Hannon, and Peter Parks; then also public-interested
25 citizen Ann Brayfield; and then on behalf of the League of

1 Women Voters, Ms. Debbie Aiona.

2 After that public testimony -- and the public
3 testimony will not be limited just to the pending amendment,
4 but, frankly, the public is welcome to speak on anything
5 germane to the settlement that they wish.

6 After that, I'll hear generally on the overall
7 compliance assessment, again, first, from the United States,
8 but then after that from the compliance officer followed by the
9 AMA Coalition, the Mental Health Alliance, comments from the
10 Portland Committee on Community Engaged Policing, the Portland
11 Police Association, and the City.

12 Let me tell you all that I have received a number of
13 documents, and I have read a number of documents, but I'm not
14 sure I have everything. So let me tell you what I have
15 received and read and then you can all tell me if I'm missing
16 something.

17 I have received and read Plaintiff United States'
18 notice of fourth periodic compliance assessment and their
19 compliance assessment report, where I do note that there is
20 substantial compliance reported by the United States with most
21 aspects of the settlement agreement. The two aspects in which
22 there is a notation of only partial compliance; and hence,
23 partial noncompliance relates to an investigation time frame
24 issue, and then, of course, the Portland Committee on Community
25 Engaged Policing.

1 I have also received and read the City of Portland's
2 notice of periodic compliance and the City of Portland's second
3 memorandum and memorandum in support of the final approval of
4 the proposed settlement agreement amendments.

5 I have received and read the June 2019 status report
6 from the Albina Ministerial Alliance Coalition for Justice and
7 Police Reform. By the way, here, I must say I found very
8 helpful the articulation of the quantitative and qualitative
9 metrics. That was something that I mentioned that I was
10 looking for assistance on and needed to contemplate when we met
11 about six months ago, and I found that articulation by the AMA
12 very helpful. So thank you for that.

13 I have also received and read the June 19th status
14 report from the Mental Health Alliance and also found that very
15 helpful, and that's supported by the declaration of Mr. Chavez.

16 I have also received written comments from the League
17 of Women Voters, specifically from Debbie Kaye, its president,
18 and Debbie Aiona, its action committee chair, and I thank them
19 for that.

20 I have received an extensive email from Portland
21 Copwatch, Mr. Handleman, and I thank that organization for
22 those comments.

23 I've received, separately, comments from Kalei and
24 Ted Luyben, and I thank them both for their comments.

25 If anyone else has sent in written comments, I have

1 not seen it or received it or it hasn't been brought to my
2 attention. If any other parties or anyone has sent in or filed
3 something else, please call it to my attention because it has
4 not been brought to my attention, or I must have overlooked it.
5 But that's the identification of what I have seen and read in
6 preparation for this hearing.

7 So unless anyone has any preliminary or procedural
8 comments before we begin, I'm ready to hear the presentation
9 from the United States.

10 MR. HAGER: Thank you, Your Honor.

11 At the outset I want to remind the Court and the
12 public that the day-to-day work on this case is managed for the
13 United States by the career attorneys of the Department of
14 Justice, and we aren't driven by personal creed or political
15 ideology, but we serve justice and the rule of law. In this
16 case we're committed to faithfully monitoring the City's
17 compliance in representing the public's interests and
18 constitutional policing.

19 This morning we are here to renew the joint
20 stipulated motion to amend the settlement agreement by
21 substituting the Portland Committee on Community Engaged
22 Policing, or PCCEP, for the Community Oversight Advisory Board,
23 the COAB. I will reference Docket 157.

24 The PCCEP reflects an intentional and inclusive
25 effort to create a perpetual body to increase community

1 confidence in the Portland Police Bureau through systemic
2 oversight and engagement. Its members have earned Your Honor's
3 validation, and the PCCEP deserves the Court's final approval.
4 It bears mention that final approval in this context does not
5 mean the City is released from its obligation. It just sets in
6 stone what that obligation is.

7 A bit of history will situate the United States
8 justification for approval. The parties put the amendment
9 before the Court in December 2017, pursuant to the process
10 established by paragraph 184 of the agreement. The Court
11 previously ruled that that process is fair, adequate, and
12 reasonable.

13 City Council unanimously approved the amendment, but
14 only after extensive revision following public comment. The
15 United States agreed to the change, finding it necessary to
16 overcome unforeseen obstacles to compliance and consistent with
17 the principles embodied by the agreement. The PPA and AMAC --
18 that's the union and the Albina Ministerial Alliance, Coalition
19 for Justice and Police Reform, they stipulated to the amendment
20 as a path forward to achieving the goals of the settlement.

21 In April of 2018, the Court conditionally approved
22 the PCCEP pending some experience that the body gets formed
23 according to plan and functions well according to its design,
24 and that's Docket 171.

25 In October 2018, the Court then deferred ruling on

1 the renewed joint motion until this status conference, and
2 that's Docket 192. At that time the PCCEP had been formed, but
3 hadn't yet held a single meeting. The record reflects the
4 Court's wish, then, to learn a little bit more about how the
5 PCCEP was proceeding before giving final approval.

6 We know a lot more now. Since October, the parties
7 have invested quite a lot of time, quite a lot of money, and
8 quite a lot of hard work into performing under the terms of the
9 conditionally approved amendment. The PCCEP's volunteer
10 members have too. Today, we have more than a facially
11 reasonable set of terms. We have more than blind faith and a
12 blank check, unverified by any account of experience.

13 Today, Your Honor, we have experienced a better
14 informed Court's endorsement. The sweat equity that has been
15 poured into the PCCEP is real. It is backed by demonstrable,
16 quantitative data, and let me share some of that. The full
17 PCCEP has held seven regularly scheduled three-hour long
18 monthly public meetings/town halls. Meetings are scheduled for
19 the fourth Tuesday of every month. They are scheduled out for
20 the rest of the year. They are scheduled at accessible
21 locations across Portland.

22 PCCEP has five committees that have collectively held
23 more than a dozen hour- or two-hour long meetings that have
24 been open to the public. These subcommittees accept public
25 participation, accept the public as members of those

1 subcommittees, and we encourage everyone in this building,
2 including the amici, including the public, to participate in
3 those subcommittees.

4 Now, all of these meetings have given the community
5 face-to-face opportunities to voice their opinion. There is
6 one designated website that contains all of this information.
7 It is at www.portlandoregon.gov/pccep.

8 Thousands of collective hours have been put into
9 advancing the PCCEP's mission by city employees and
10 contractors, by DOJ and compliance officer personnel providing
11 technical assistance, by PCCEP members doing the work, and by
12 Portland citizens giving public input.

13 The City has invested hundreds of thousands of
14 dollars into supporting the PCCEP, including dedicated
15 administrative staff, contract facilitation services, training,
16 office and meeting space, catering, and monthly stipends for
17 the PCCEP members.

18 Since its establishment, PCCEP has had 20 members,
19 due to seven stepping down for personal reasons before the end
20 of their term. All of them have stepped down for personal
21 reasons, the most common of which is moving out of state. None
22 have stepped down because of inadequate PCCEP staff support.

23 THE COURT: 7 out of 13 have stepped down?

24 MR. HAGER: 7 out of the original 13. They have been
25 replaced by alternate members.

1 Before the initial pool of six alternates was
2 exhausted, the City moved with deliberate speed to appoint a
3 second slate of nine alternates, which PCCEP has now begun to
4 draw on. A second round of training is in the works.

5 PCCEP has also made a handful of recommendations that
6 the City has accepted, responded to in writing, except for the
7 most recent one, which was formally recommended in the May
8 meeting. Other recommendations have been proposed, but not
9 passed, after vigorous debate. What we see is PCCEP building
10 capacity, and we expect to see increased progress toward
11 meeting substantive goals in the coming months.

12 Now, by highlighting these numbers, I don't mean to
13 imply that PCCEP can't be better or to downplay its challenges.
14 There have been a few, such as the high turnover that
15 Your Honor just mentioned.

16 We are also mindful, and we appreciate and
17 acknowledge some of the legitimate concerns that have been
18 raised by the alliances, by the public, including the League of
19 Women Voters, the Albina Ministerial Alliance, the Mental
20 Health Alliance, and their status reports. But those relate
21 directly to implementation, not to a structure of PCCEP, and
22 they don't relate to whether the proposed amendment is fair,
23 adequate, and reasonable.

24 Your Honor, adequacy of the amendment shouldn't turn
25 on any particular snapshot of performance. That's not the

1 legal standard. More importantly, challenges have created
2 opportunities to rise up to show resilience and improve, and
3 PCCEP has not just that. It amended its bylaws to ask for a
4 larger alternate pool. It ironed out early dissensions to a
5 facilitated members-only retreat. Its leadership team has
6 embraced the challenge of setting its own agenda and running
7 meetings. Co-chairs Lakayana Drury and LaKeesha Dumas have
8 performed that role admirably.

9 Now, at the last status conference, the
10 Reverend Dr. Haynes raised the importance of building
11 relationships, in addition to some of the qualitative and
12 quantitative measures I've just discussed. In this regard the
13 United States believes that PCCEP is hitting the mark. PCCEP
14 has connected with Chief Outlaw, with PPB' Office of Community
15 Engagement, led by Officer Natasha Haunsperger, and PPB's
16 Equity and Diversity Office, led by Elle Weatheroy.

17 PCCEP's members have also established relationships
18 with the Office of Equity and Human Rights, the compliance
19 officer, the Mayor's Office, and other relevant groups,
20 including members of the Albina Ministerial Alliance and the
21 Mental Health Alliance, who both participated in the training
22 sessions for PCCEP members, and we will invite them again to
23 participate in training the alternates.

24 There is active cross-pollination between PCCEP
25 members and other city bodies, working to improve

1 police-community interaction. For example, PCCEP Co-chair,
2 LaKeesha Dumas, sits on the Behavioral Health Unit Advisory
3 Committee. Youth Sub-committee Co-Chair Britton Masback has
4 recently joined the Training Advisory Council. Newest member,
5 Vadim Mozyrsky, serves on the Citizen Review Committee.

6 Now, PCCEP has also established relationships with
7 community members. It regularly takes comment from members of
8 the public, including members of the amici groups, members of
9 Portland Copwatch, Phillip Wolf, Ann Brayfield, Kalei Luyben,
10 and others with whom this Court is very familiar. It has also
11 heard heart-wrenching testimony from families of people who
12 have been shot by police.

13 Now, last October, the Reverend Dr. Bethel talked
14 about restoring hope. That's a lofty goal for any government
15 body, especially so for a volunteer group of 13 citizens. But
16 let me say I've walked with this group. I've watched them come
17 together and become self-directed, and they are up for this
18 task. Hope is a continuum, and we believe the PCCEP is moving
19 the needle in the right direction. The City has endowed them
20 with a broad mandate, the flexibility to set their own agenda,
21 and a life beyond the settlement agreement. PCCEP creates a
22 great chance for a lasting framework for community engagement
23 and oversight, but they need the support of Your Honor.

24 In sum, we ask that you now give final approval to
25 the amendment substituting PCCEP for the COAB for three

1 reasons: First, the parties stipulated to and presented the
2 amendment in accordance with the settlement agreement. Second,
3 the amendment is fair, adequate, and reasonable on its face, as
4 evidenced by Your Honor's direction to perform under the
5 conditionally approved amendment. Third, in practice, the
6 PCCEP has demonstrated its adequacy.

7 At its core, conditional approval does just one
8 thing: It preserves the possibility of rejection. At this
9 stage, however, with the City fully invested and with
10 volunteers having devoted substantial time and energy,
11 rejecting the PCCEP would be both a disproportionate and
12 inequitable response to any perceived shortcoming.

13 More importantly, this Court's approval today will
14 validate the PCCEP's effort, the City's effort, and have a
15 corresponding positive effect on the legitimacy of the PCCEP in
16 the eyes of the public.

17 Your Honor, we ask that you please grant the joint
18 stipulated motion to amend the settlement.

19 THE COURT: Thank you, Mr. Hager. That was very
20 helpful.

21 Let me ask a follow-up question. You said a few
22 moments ago that the PCCEP has demonstrated its adequacy, and
23 when we were together last, last October, one of the questions
24 that I posed to everyone is how will we know when the PCCEP is
25 working? How we will know when the PCCEP's performance is

1 adequate? And you said they've demonstrated their adequacy.

2 One of the specific enumerations of criteria that I
3 received in response to my question came from the AMA, where,
4 in their filing at Docket 201, page 4, they identify 18
5 quantitative criteria or measurements for the PCCEP and seven
6 qualitative criteria.

7 Does the United States agree that those are well
8 stated and good criteria for measuring the adequacy of the
9 PCCEP? Are there any that you would add? Are there any that
10 you would delete?

11 MR. HAGER: We don't agree with all of them. I
12 believe some of them conflate, very clearly, performance with
13 adequacy of an amendment on its face.

14 With respect to the quantitative measures, I think we
15 could agree with at least 14 of them, but we believe those have
16 been met. That's 1 through 4, 7 through 11, and 13 through 17.

17 THE COURT: So the ones you don't agree with are 5
18 and 6. What else?

19 MR. HAGER: 5, 6, 7, 12, and 18.

20 THE COURT: Do you address that in your written
21 submissions? I'm not sure I saw that.

22 MR. HAGER: No, we haven't, Your Honor. We received
23 this on Tuesday and have not had a chance to get permission up
24 our flagpole. Some of the things we do manage; some of the
25 things we don't manage.

1 THE COURT: I understand. I'm not being critical. I
2 am just seeking information.

3 Are there any other qualitative metrics or
4 measurements with which the United States does not agree?

5 MR. HAGER: I would think all of them, and the reason
6 being that these qualitative measures are even beyond the
7 settlement agreement. They are very difficult to put on a
8 PCCEP member. If the volunteers see this and say, "We aren't
9 effective/we aren't functioning just because we haven't changed
10 the culture of the Police Bureau," that's a heavy burden. I
11 don't think the United States can agree to a single one of
12 these qualitative measures.

13 THE COURT: All right. Thank you, Mr. Hager.

14 All right. Next, I look forward to the comments from
15 the City regarding the PCCEP.

16 MS. REEVE: Thank you, Your Honor.

17 Mayor Wheeler is here and would like to make some
18 brief remarks. He has got city-sister mayors in town, and he
19 is not able to stay all day. So would it be possible for him
20 to make a couple of brief remarks?

21 THE COURT: Yes, of course.

22 MS. REEVE: The podium?

23 THE COURT: What I generally do in this courtroom,
24 wherever anyone feels comfortable standing, as long as I can
25 hear you, you can stand wherever you want.

1 Welcome, Mr. Mayor.

2 MAYOR WHEELER: Good morning, Your Honor.

3 I hope today finds you well. As our attorney
4 indicated, time is short. I wanted to be brief, but I wanted
5 to be here and express my unequivocal support for the
6 incredible work that I believe the Portland Committee on
7 Community Engaged Policing has been doing. We have what I
8 would describe as an extremely talented, passionate, and
9 dedicated group of Portlanders who are working not only to
10 improve the way the Police Bureau engages with the community,
11 but I believe they have also improved the way that the City
12 engages with the community. I also believe that the thoughtful
13 work that these volunteers have been doing, some of which has
14 been described by the U.S. attorney, should be honored, and it
15 should be supported unconditionally. I ask the Court to grant
16 full approval to the settlement agreement amendments that
17 created the PCCEP.

18 Finally, I would like to add, from my perspective,
19 while I don't follow chapter and verse, I think one aspect that
20 we should have people talk about is the fact that there's
21 independence of this committee, and they get to decide what
22 issues they would like to raise, and they make recommendations
23 to the City, to the Police Bureau, to the chief, to myself, and
24 we implement the recommendations that they have put forward.
25 So from my perspective, that is one measurement of success I

1 would like to put on the table.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Mayor. I appreciate your
4 perspectives and your views and all that you are doing.

5 Ms. Reeve or Mr. Vannier.

6 MS. REEVE: Mr. Vannier will now address the
7 amendment.

8 MR. VANNIER: Thank you, Your Honor. Good morning,
9 Your Honor.

10 A year and a half ago the United States, the City,
11 and the AMAC filed a joint stipulated motion to enter the
12 amended stipulated settlement agreement in this case, and the
13 City joins in the United States' legal arguments as to that
14 motion, and so I will try to not duplicate them here.

15 But I do want to emphasize again that those
16 amendments were adopted using the processes set forth in
17 paragraph 194 of the original settlement agreement, which is
18 now paragraph 184 of the amended agreement, and that is a
19 process again that this Court had deemed fair, adequate, and
20 reasonable at the time the original settlement agreement was
21 adopted years ago.

22 Again, April 2018, this Court approved the amended
23 settlement agreement, except for the amendments pertaining to
24 the PCCEP, which this Court approved only conditionally; the
25 condition being that the parties report back to this Court

1 within six months. The parties did so, reporting back to this
2 Court in October of last year. At that time the City and the
3 United States renewed their motion to enter the amendments to
4 the settlement agreement related to the PCCEP. At the
5 conclusion of that hearing, this Court deferred ruling on the
6 parties renewed motion until today.

7 Now, as this Court is aware from the parties' written
8 submissions, and as Your Honor will be hearing today, the PCCEP
9 has been an active functional body since last fall. It has
10 held monthly meetings since November of 2018. It adopted
11 bylaws. It has formed four subcommittees, which have held 13
12 meetings to date. It has elected officers. It has held seven
13 public meetings in a variety of locations across the city.

14 Two of those meetings have been town halls at which
15 the compliance officer presented his quarterly reports. I also
16 do want to correct just a small factual misstatement. I wanted
17 to note that only six of the original 13 members of the PCCEP
18 have resigned. The seventh was an alternate who had to move
19 out of town, and so I did want to correct that.

20 THE COURT: Thank you.

21 MR. VANNIER: So, in short, the PCCEP framework
22 established by the amended settlement agreement has been
23 implemented, and it is working.

24 Now, as Your Honor is aware from the City's
25 memorandum in this case and from the United States'

1 submissions, the City is not yet in full compliance with the
2 PCCEP amendments. I also want to note that criticism has been
3 levied that PCCEP has not received adequate support because a
4 new permanent program director has not been hired.

5 I do want to note, though, that following the
6 resignation of the prior program director, the City had a very
7 experienced and capable Office of Equity and Human Rights
8 employee, Judith Mowry, serving as an interim program director.
9 The City has also hired a very capable program assistant, who
10 is providing program support and attending all meetings and has
11 updated and expanded the PCCEP website. I want to note, as
12 well, that the City has posted and is scheduling interviews for
13 a permanent program director, but it is harder to hire when a
14 program is only conditionally approved.

15 THE COURT: What's your evidence for that?

16 MR. VANNIER: Well, that is the information that was
17 conveyed to me by my client in this case -- by the City. I
18 would be happy to provide some evidence on that point if the
19 Court requires that.

20 THE COURT: I would. I'm especially interested if
21 that is a comment from any of the applicants or any people who
22 have said that they've declined to be an applicant because it
23 has only been conditionally approved.

24 I have tremendous respect for the City, but if it is
25 just simply their opinion without other evidence that it is

1 harder to hire when there is only conditional approval, that's
2 not as weighty as if there were evidence from applicants or
3 people who would otherwise be an applicant. So I would
4 appreciate any evidence on that point that you would like to
5 provide.

6 MR. VANNIER: I understand. I also want to point out
7 that yesterday Mental Health Alliance, in its filing, raised
8 the point that would be desirable to have materials from the
9 former COAB website accessible on the PCCEP website, and we
10 agree with that. We will be doing that.

11 Another concern that was raised in the filings is
12 that the PCCEP does not have an outside facilitator. But,
13 again, the PCCEP was intended to have significant independence
14 and self-determination. Today, the PCCEP has elected to
15 self-facilitate its meetings, and that has been occurring
16 capably by the two co-chairs. If PCCEP does request the
17 services of an outside facilitator, then the City would provide
18 one.

19 Finally, again, I want to address, briefly, the
20 concerns regarding turnover. So four members have resigned
21 because they have moved or are going to move out of the
22 Portland area. Three members resigned for personal reasons.

23 THE COURT: I take it none of those members stated
24 they resigned because there has only been conditional and not
25 final approval; am I correct?

1 MR. VANNIER: I believe that's correct, Your Honor.
2 Yes.

3 All those vacancies were timely filled with
4 volunteers, initially, who had gone through the original
5 training process with PCCEP and now from a newly selected pool
6 of alternates who are going through orientation as a group, and
7 the City is qualified in maintaining a trained pool of
8 qualified alternates.

9 I do want to note, though, that while this Court may
10 hear concerns about the implementation of the PCCEP process,
11 those concerns ultimately don't have any bearing on whether the
12 amendments to the settlement agreement themselves are legally
13 deficient.

14 THE COURT: Why not?

15 MR. VANNIER: They do not because the process for
16 amending the settlement agreement is provided by paragraph 184
17 of the settlement agreement, and that process was complied
18 with. And I do want to emphasize that the implementation of a
19 settlement is something that happens after the settlement is
20 adopted, and that is something that monitoring will go on even
21 if this Court approves the PCCEP amendments.

22 THE COURT: Let me share with you my concern on that
23 point and give you an opportunity to respond. I know that when
24 I approved the original settlement agreement, it was before any
25 implementation had taken place, precisely the arguments you are

1 making now, although by one of the predecessors for the City,
2 and then we saw what happened, that there was non-compliance
3 with a significant portion of it.

4 So perhaps from that lesson I needed to learn that
5 just because a structure looks good and looks like it will
6 likely result in compliance and even success, that maybe just
7 simply having an appropriate structure is not sufficient, and
8 that before approving any amendments, I would like a little bit
9 more assurance that it is being implemented appropriately.

10 Is that an incorrect way to look at it?

11 MR. VANNIER: With respect, Your Honor, yes.

12 THE COURT: By the way, "with respect" means, "Yeah,
13 I disagree with you," and that's fine. That's why I'm asking
14 you.

15 MR. VANNIER: Because, again, that is precisely why
16 the settlement agreement embodies a mechanism for amendment,
17 because, yes, amendments may prove necessary, and, yes, we
18 acknowledge what happened with the COAB. So what I would say
19 is the concern that Your Honor is voicing are concerns tied to
20 limitation, but not to the legal standards for adopting
21 something.

22 THE COURT: All right.

23 MR. VANNIER: Turning to the policy concerns that I
24 do want to address briefly, the parties, members of the PCCEP,
25 and the public need and indeed at this point deserve to know

1 that the PCCEP is not at this point a sort of second-class body
2 under the settlement agreement or that it is somehow an
3 afterthought but that it is an integral part of the community
4 engagement process under the consent agreement.

5 THE COURT: If you want me to say that it is not a
6 second-class citizen and it is an integral part, I so say it.

7 MR. VANNIER: Thank you, Your Honor.

8 Relatedly, the parties, the members of the PCCEP, and
9 the public need clarity at this stage of the proceedings. The
10 City needs to know what it is being required to comply with,
11 the United States needs to know what it is monitoring, and the
12 members of the PCCEP and the public need to know that the PCCEP
13 is not ephemeral; that the rug will not someday be pulled out
14 under them, but rather the PCCEP is a long-term body that has
15 an integral and ongoing role to play in the process of police
16 reform and accountability in the city of Portland.

17 Again, it is important to emphasize that approving
18 the PCCEP amendments to the settlement agreement is the key
19 step in that journey, but it is not the end of the journey.
20 The parties will still report to Your Honor at these
21 proceedings. The United States will still be monitoring the
22 ongoing compliance and progress towards compliance under those
23 amendments, but at this point there is no reason for further
24 delay as a legal matter.

25 And for those reasons, Your Honor, the United States

1 and the City again renew their joint motion to enter the
2 amended settlement agreement in this case. My understanding is
3 that the AMAC does not oppose that motion.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Mr. Vannier.

6 All right. Are there comments from the Portland
7 Police Association, Mr. Karia?

8 MR. KARIA: Thank you, Your Honor. No comments
9 beyond PPA expressing its support for both the arguments
10 offered by Mr. Hager and Mr. Vannier and other members of the
11 City's team and, in addition, support for the submissions by
12 those parties with respect to the ongoing efforts of PCCEP.

13 I do want to note for the record that the PPA does
14 continue to join in the motion for final entry of the PCCEP
15 settlement agreement amendments.

16 THE COURT: Very good. Thank you, Mr. Karia. I
17 appreciate those comments.

18 Now, for the AMA Coalition, Ms. Chambers or anyone
19 else that you wish to have speak for the AMA.

20 MS. CHAMBERS: Thank you, Your Honor. I will pass it
21 over to my clients in just a moment here, but I wanted to
22 preliminarily say, along the lines of what you mentioned
23 earlier, the AMAC agrees that implementation and structure are
24 very much intertwined, and we have serious concerns about some
25 of the ways in which the PCCEP has not progressed at this point

1 and some trouble points.

2 My reading of the amendments to the settlement
3 agreement is a big difference between the COAB and the PCCEP is
4 once this Court approves the settlement amendments, there isn't
5 a lot of leverage of the Court in terms of the actual structure
6 of the PCCEP. So while AMAC believes that this very well could
7 be a great structure that could work well, we just haven't seen
8 enough of that yet to determine that.

9 I'm going to hand it over to Dr. Bethel here, who is
10 joining us.

11 THE COURT: Very good. Thank you, Ms. Chambers.

12 Whenever you are ready, Dr. Bethel. Welcome, sir.

13 DR. BETHEL: Good morning, Judge Simon. Thank you.

14 I appreciate the opportunity to remain seated --

15 THE COURT: Of course.

16 DR. BETHEL: -- to address the Court today.

17 This is a very, very important part of what I do for
18 our community -- to be here. I rushed all of my physicians
19 this week to kick me out of the hospital yesterday evening so I
20 could be here this morning. I'm not here against their
21 directions. I'm here because I am committed to this process.

22 I want to say to the Department of Justice, to the
23 City, as well as to PPA, that the AMAC appreciates the work and
24 the commitment of the PCCEP members and what they have done.
25 It has been a great job of them trying to attempt to replace

1 what was known as the COAB. The PCCEP is a good attempt at
2 trying to do that for the oversight of the settlement
3 agreement, but it has not shown nor exhibited for me the hope
4 for replacement and action that we thought that PCCEP would
5 bring.

6 I will state that there has been action, and as
7 Mr. Hager stated, in the quantitative pieces. And, yes, there
8 have been a lot of scheduled meetings. They are in scattered
9 sites. Some of those sites are not the best sites to encourage
10 community engagement because of location and the amount of
11 space.

12 And there has been, even in those scheduled meetings,
13 not a lot of participation or attendance by the community, not
14 even as much by those who are the PCCEP members. In fact, in
15 one of the meetings, or two, I'm told that only the co-chairs
16 showed up, not even the other subcommittee members. So no
17 substantial implementation really has been forthcoming.

18 Now, the City chose totally to be out of compliance
19 dealing with the COAB and moved to end the COAB for over a year
20 and then came with the conceived PCCEP. We won't rehash all of
21 what we went through to get to that agreement, but we worked on
22 that. But the COAB was problematic in that it had problems
23 with keeping facilitators that could control the meetings.

24 The COAB was problematic in that there were people
25 who always brought about unrest and made members of the COAB

1 feel unsafe. While some of them were addressed, some of them
2 were not addressed, and when it began to reach what we might
3 call some loggerheads, then what we had was the City just
4 removed itself totally from it and created this new PCCEP. It
5 was to be the new and improved and better model; however, that
6 has not been the case.

7 While there have been scheduled meetings, as I've
8 said before, and there are some forms of structure, those
9 meetings have not been, again, well attended and therefore
10 lacks the essential charge of the PCCEP: Community engagement.

11 If it is working, if it is effective, if it is doing
12 what it is supposed to do, then community would be there. I
13 need only go back and say that even though COAB meetings were
14 contentious they were attended; the community was there. Now,
15 perhaps some of the community did not appreciate them being
16 there because of their actions, but they were there. We are
17 lacking that now at these PCCEP meetings.

18 Again, we must say that we are not getting the
19 information of these meetings as quickly as it is being made
20 out to be. Sometimes it is less than two weeks. We ask for at
21 least two weeks.

22 THE COURT: My understanding is that sometimes, too,
23 the materials that will be discussed at the meeting aren't
24 provided until about a day or two before the meeting. Is that
25 correct?

1 DR. BETHEL: That's correct, from my understanding.

2 Then we move on to say that the training of the
3 alternates have not risen, to my understanding, the level of
4 the training given to the original 13 members of the PCCEP. If
5 performance is not to be any of the criteria in which we
6 evaluate its effectiveness, then the performance is not seen.
7 If it is not manifested, then it is not working effectively and
8 efficiently.

9 When we talk about the quantitative things, we are
10 talking about meetings being open to the public; members of the
11 PCCEP and community members in attendance at each meeting;
12 testimony being taken before votes; forms for the public;
13 policy initiatives; developing metrics to measure possible bias
14 to police stops; contact with the diversity of community
15 members; internal training, independent assessment and
16 implementation of the settlement agreement; response to COCL
17 reports, including at quarterly town hall meetings; diversified
18 locations; meetings in different communities; use of
19 diversified cultures; meeting with community groups listed in
20 PCCEP founding documents and others; to ensure diversity in the
21 PCCEP membership; to maintain an active list of trained
22 alternates so quorum is always met; announcements of meetings
23 at least two weeks in advance to mass media, community media,
24 and community; active work of subcommittees; to engage all of
25 City Council, not just the Mayor, on the progress of PCCEP and

1 the PPB.

2 When we move to talk about the quantitative things --
3 or qualitative things -- the DOJ, beyond the settlement
4 agreement, and it's difficult to put a PCCEP member in place,
5 we talk about change and transformation in the relationship
6 between the Portland Police and the community. While we
7 recognize that this is going to be ongoing and take some time,
8 we are not seeing those steps moving at this particular time,
9 in particular communities of color or houseless persons and
10 persons with mental illness or perceived mental illness,
11 reduction of the use of force and increase of deescalation.

12 It seems in the last few months, in the cases that we
13 have had, that has been increased in terms of dealing with
14 those who have been with mental illness or perceived with
15 mental illness or in a crisis. It has been increasing rather
16 than going down.

17 The reduction of disproportionate police in the
18 communities of color. Stops are still out of sync compared to
19 where we are in the city, particularly with persons of color.

20 Houseless persons and other vulnerable communities.

21 Use of stop data and force data and arrest data to
22 measure progress.

23 Transformation in the Portland Police culture of "us
24 against them."

25 Surveys that are meaningfully inclusive of

1 communities of color and not just sporadically used and then
2 answered.

3 The issues that plague COAB are still present with
4 the PCCEP: Lack of consistency in members. Yes, you're
5 correct. Six are gone; one is an alternate. But the issue was
6 the same with COAB. We had members leaving, and we could not
7 get them trained.

8 I will go back and say again, on the very first
9 meeting of the COAB, at the library, I said to then our judge
10 who was facilitating, one of the things that we have not done,
11 we have not provided for alternates, and we need to work on
12 that. We went through all of COAB, and we really never got
13 that addressed until after COAB was taken away.

14 We still are dealing with the facilitation. Yes,
15 COAB members -- PCCEP members are saying they want to
16 self-direct, but sometimes when you don't have the ability
17 totally to self-direct, you need to ensure that there is
18 someone beside to give you some assistance to go further.

19 When I learned to ride my bicycle, I put on those
20 things called training wheels. The ability to pedal was my
21 ability, but to balance I needed some help. I think PCCEP
22 needs some help -- not overbearing -- but the City needs to
23 provide that help to them.

24 I believe that, though, a program has not been
25 approved, legally a candidate can be hired and can be working,

1 and that will help with the implementation as well as the
2 outcome of what we should see.

3 Structure and implementation are not uniquely
4 separated in this, and we need to see a map: How
5 implementation goes to determine the adequacy of structure.
6 Structure and adequacy are intertwined.

7 We appreciate the Court's question: Should we see
8 how implementation is going to access the adequacy of
9 infrastructure? We support and believe that that is true.

10 AMAC is not asking the Court to reject PCCEP, but it
11 needs more time before it is finally entered in so that we can
12 see that it will be working, for we have not seen that totally
13 in the settlement agreement, and we do not believe at this time
14 that PCCEP is ready to have that entered in.

15 Thank you, Judge, for your time and the Court's time.
16 If you have any follow-up questions, I will be happy to try to
17 answer them or respond. If not, we do have some lawyers here.
18 (Laughter.)

19 THE COURT: Thank you, Dr. Bethel. I do have one
20 follow-up question. You say that you are not asking that I
21 reject the PCCEP, and, frankly, I'll tell you, I'm not giving
22 any consideration at this time to rejecting the PCCEP. I think
23 it shows tremendous progress, and it shows tremendous promise.
24 But you tell me that you think more time is needed before I
25 give it formal approval, which, among other things, would

1 result in a little bit less ability of the Court to exercise
2 oversight.

3 How much time do you think is needed? How much more
4 time do you think is needed?

5 DR. BETHEL: Judge, respectfully, I believe about
6 another six months. The reason why I would have that -- that
7 time -- the City can hire a person who can help facilitate and
8 be totally dedicated to this process.

9 While I have great respect for the ones that they
10 have used, O'Grant and Judith Mowry, and there's nothing
11 against them or their character, utmost, I do really appreciate
12 them, but I do not believe they are the ones that are 100
13 percent dedicated to doing this because they have other things
14 in their portfolio, and that limits the amount that PCCEP gets.
15 And PCCEP is kind of getting the treatment of being the
16 stepchild.

17 THE COURT: The what?

18 DR. BETHEL: The stepchild.

19 THE COURT: Do you think that the PCCEP being
20 perceived as the "stepchild," as you say, is in any way
21 contributed to by the fact that I have only given conditional
22 approval and not final approval?

23 DR. BETHEL: I do not believe that because it has
24 conditional approval that it is being treated that way. I
25 believe that it is just being treated that way to get to a

1 point to list the particular things that they listed as
2 qualitative. We asked for a community organizer to help
3 organize, get the word out, and bring people into the meetings,
4 but the approval -- conditional or final -- does not keep it
5 from being what it should be. If anything, because it has
6 conditional approval, it seems like the pedal has been put to
7 the metal to push it harder so that it would come in here
8 sparkling so great that everybody would have to throw up their
9 hands and shout, "Let's move with this thing." But,
10 unfortunately, because it is not sparkling that way, we are
11 saying we're reserved because we don't see it doing what it has
12 the promise of being able to produce for our community.

13 THE COURT: Thank you very much, Dr. Bethel. As
14 always, I appreciate your comments and your insight and wisdom.
15 Thank you, sir.

16 Ms. Chambers.

17 MS. CHAMBERS: I don't think we have any other
18 comments from AMAC.

19 THE COURT: Do you want to address at this time some
20 of the concerns that I have heard from the United States
21 earlier in this hearing that they disagree with several of your
22 proposed metrics, specifically 5, 6, 7, 12, and 18 of the
23 quantitative side and all of the qualitative metrics? Any
24 response that AMA Coalition can offer to that comment?

25 I understand they didn't submit it in writing. They

1 answered it in response to my question. I am putting you on
2 the spot, if you want to answer it now, or if you want to
3 submit something later, or both.

4 I'm going to give you this opportunity to respond now
5 orally if you wish.

6 MS. CHAMBERS: Thank you, Your Honor. I would like
7 the opportunity to submit something later in writing so my
8 clients can weigh in on it.

9 THE COURT: Granted.

10 MS. CHAMBERS: But, just initially, I would suggest
11 that, as far as these qualitative measures go, AMAC is not
12 saying that all of this has to be accomplished before the
13 settlement amendments can be approved. These are indications
14 and aspirations and things that we see that there is progress
15 towards and potential towards, and so it's a much bigger
16 picture. We don't expect it is all going to be changed
17 overnight.

18 But a lot of these quantitative measures are the
19 things that we can actually look at and are they happening
20 right now, and I would like to see from the DOJ why they don't
21 believe certain line items are important or required, such as
22 contact with the diversity community members and use of
23 diversified cultures, because I think those would be very
24 integral to a successful PCCEP, if we are working with all of
25 the members of the community, and I think that that is

1 something that we haven't seen happening so far. So I would be
2 curious as to why that would not be an important consideration.

3 THE COURT: Let me follow up with the following,
4 because I think what you've given me in your status update --
5 your June 2019 status update is very helpful. But what I'm
6 still struggling with is if I do not give final approval today,
7 if I simply continue the conditional approval, what do I need
8 to see to know when it's time to give final approval?

9 Let me share with you that, as I said to Dr. Bethel,
10 I'm not at all inclined, at least now not at all, to disapprove
11 it. I think the PCCEP shows promise and potential, and I think
12 it is going in a very good direction. I agree with the
13 comments that I've seen so far in writing that much more needs
14 to be done, and the implementation is not quite there.

15 As Mr. Vannier from the City acknowledged, the City
16 is not yet in full compliance with the PCCEP amendments. But
17 my question is, when will I know when is the right time to give
18 final approval? Let me submit that I don't think that a
19 correct answer is "never."

20 MS. CHAMBERS: Thank you, Your Honor.

21 THE COURT: I think at some point in time it is going
22 to be time to either approve or disapprove.

23 MS. CHAMBERS: Correct. Dr. Bethel would like to
24 answer your question.

25 DR. BETHEL: Thank you, Judge. No, the answer is not

1 "never," but I believe it should be stability. Stability can
2 be determined by the stability of members staying constant; the
3 stability of attendance; the stability or great emphasis placed
4 towards a community organizer making sure that there are people
5 in attendance at the meetings; and also that we would see
6 stability from the City where the entire City Council is
7 involved and kept up-to-date and not just the Mayor.

8 I think when we put some of those in, and some
9 others, we will come to a place where we will say we are ready
10 to move forward. I'm involved in something -- and this has
11 maybe a different -- but in order to move from a particular
12 financing of a venture in its construction phase to get to its
13 permanent phase, it requires that we remain at a certain level
14 of occupancy and maintain it for a period of 90 days.

15 If we cannot do that, then they say you are not
16 ready. That's stability. Let's bring some stability to the
17 PCCEP and watch us move this thing together. As we have been
18 always in the position of saying, we're not here to just tear
19 things down or see nothing happen. If that was the case, we
20 wouldn't take the time that we have placed in this for over ten
21 years in a congruent way. When we add up all of our community
22 people who have been working on this in the last ten years, we
23 are hundreds of years invested into making our community safe,
24 not only for African-Americans, but for everyone, because
25 what's good for us is good for everyone in the city of

1 Portland. Bring us stability. And they can accomplish this, I
2 believe, within the next six months, and we will be willing to
3 say it's time to move forward.

4 THE COURT: Thank you. I appreciate those comments,
5 Dr. Bethel.

6 Speaking of making the community safe for everyone,
7 that includes those with mental health issues. I think now is
8 the time, then, to hear the presentation on the PCCEP
9 amendments from the Mental Health Alliance.

10 Mr. Chavez.

11 MR. CHAVEZ: Thank you, Your Honor. Good morning.

12 THE COURT: Good morning.

13 MR. CHAVEZ: Co-presenting with me is
14 Mr. Jason Renaud.

15 THE COURT: Of course. Welcome. Come on up.

16 MR. CHAVEZ: Again, Your Honor, we are grateful for
17 your grant of our participation as an amici in this group and
18 in this settlement. There are many comments this morning about
19 what is the central question about these amendments as to its
20 fairness, adequacy, and part of its equitability.

21 Now, that adequacy, that's not entirely for the City.
22 That's for the community, and that is why you asked us to watch
23 the PCCEP form, first, design for its implementation and to see
24 whether or not it is a sound structure. I think at this time
25 we cannot say positively or negatively whether it is a sound

1 structure.

2 To echo Dr. Bethel, we are awaiting for that kind of
3 stability, that sign that we are there, and that there is
4 enough paint on the canvas to know what this picture looks
5 like. We might have chosen some of the colors, got that on a
6 palette, but we don't know what this picture looks like. We
7 need more time, more commitment, more resources; and again,
8 more community participation, particularly from persons with
9 mental illness to understand what we are dealing with.

10 To that end, many of these notes have been brought up
11 in our brief and also by AMAC. But as to notices for meetings,
12 fundamentally, social media is not going to cut it. There is
13 enough constant out there to drown out whatever it is that's
14 being put out by the City to notify the public about these
15 meetings, and it's not, frankly, accessible for all people who
16 might want to have input in these PCCEP community meetings.

17 We identified fundamental concepts that we need to
18 see first. And from there, we can find, I'm sure, the other
19 quantitative metrics being met by AMAC as well as the
20 qualitative ones, and we will certainly be discussing the
21 qualitative metrics later today when we are discussing the full
22 implementation of the settlement agreement.

23 Fundamentally, substance is tied to process. We need
24 to know whether implementation is happening to know whether or
25 not the structure is sound. So, to that end, I would like to

1 invite Mr. Renaud up to discuss some of the substances that he
2 has helped develop and to provide context there.

3 THE COURT: Very good. Thank you, Mr. Chavez.

4 Welcome, Mr. Renaud.

5 MR. RENAUD: Good morning, Your Honor. I would like
6 to thank the Court again for giving our allies the opportunity
7 to participate in this process and being engaged formally with
8 this Court. I also appreciate the amount of time the Court has
9 allotted for public testimony both today and in prior
10 conferences and the generous spirit that you have maintained
11 over the years of these hearings. Because speaking up and
12 speaking out is a necessary part of empowerment for oneself and
13 for the community, persons with mental illness and addiction
14 who are not here today but who may be directly affected by the
15 decisions made in this room, it is essential for the
16 credibility of the settlement that those making decisions on
17 behalf of those areas take the time to listen and to learn.
18 Thank you.

19 There are about, based on some epidemiology and
20 census data, somewhere between 50,000 and 60,000 people who
21 live in Portland who share the experience of severe and
22 persistent mental illness. There is about another 80,000
23 people who could be diagnosed today with alcoholism. There is
24 about, probably, 200,000 people or more who are affected by
25 addiction of both illegal and legal drugs. This is going to be

1 a big number. There are maybe another 60,000 people in
2 Portland who have personality disorders. That's a lot of
3 cross-over between those groups, but it is clearly collectively
4 one of the largest singularities in our community and by far
5 the largest diagnostic group.

6 As we are aware, these are also the people who are
7 arrested and tried and jailed and paroled. So there is no
8 surprise that this entire diagnostic group is entirely
9 estranged from law enforcement. That's no surprise at all.

10 Often people with mental illness have their worst day
11 of their lives spent in custody. People with addiction, that
12 was the day everything collapsed: The day they lost their
13 jobs, the day they lost their home, the day they lost their
14 kids, and some of those folks lost their lives.

15 So when the PCCEP plan and the PCCEP members speak
16 about community engagement, that community -- excuse me -- when
17 they talk about community engagement with reference to race or
18 youth or a religious community or a neighborhood and not mental
19 illness, I'm not surprised. Those communities are relatively
20 easy to contact. They are easy to relate to. They are easy to
21 engage with. It just takes money and skill and leadership and
22 facilitation and persistence and more money. But it can be
23 done successfully. The police can repair those relationships,
24 if they want to.

25 But the separation between law enforcement and the

1 courts and people with mental illness is wide and rather
2 terrifying. We read in the paper every day how people with
3 mental illness are powerless and abused by law enforcement; how
4 over half the people arrested in Portland are people who are
5 homeless. And for us, that's just a phase or illness; it is
6 not a condition independent of our illness. People are queued
7 up on gurneys in hospitals and jails waiting to see a doctor.
8 Downtown, people are sleeping in the gutters and howling at the
9 moon. Our people are statistically the ones harmed by police.

10 So what do we do about this? I have ideas. You have
11 ideas. I think everybody here has ideas. And as ideas are
12 okay, that's a good start. They show some interest in the
13 problem. But what are we going to do with these ideas? There
14 are two things we can do. We can keep them to ourselves, or we
15 can share them, talk about them, compare them, measure them,
16 augment them, build on them, and throw them out and start over.

17 So where and when does this sharing of ideas happen?
18 Well, we have agreed somehow that that's going to happen when
19 the PCCEP gets around. After six months or so, the PCCEP still
20 has not created a safe forum to discuss the notion of abuse of
21 force against persons with mental illness. We have a little
22 subcommittee that started it. The co-chair, who was due to be
23 here today to speak, but, unfortunately, he doesn't have
24 updated ID, so he was stopped by the gentlemen at the front
25 desk.

1 But I don't think it is going to get there without
2 unbiased and unconflicted leadership. I don't think it is
3 going to get there without people who have gentleness and
4 curiosity about the problem. It might get there by talking to
5 people who have good ideas -- a facilitator or experts in this
6 area. It might get there with a capable facilitator or a
7 reasonable budget to solicit community members to attend.
8 Those things might materialize over the next six months or so,
9 but I don't think they will. It is hard to tell at the moment.
10 So today I oppose the full approval of the PCCEP.

11 Thank you.

12 THE COURT: Thank you, Mr. Renaud. I appreciate
13 that.

14 Next, I would like to hear from a representative from
15 the PCCEP itself. After that, we will take a short mid-morning
16 recess. After that, I'll invite public testimony, and I'll
17 discuss that process before we take our recess.

18 Who speaks for the PCCEP?

19 MR. DRURY: I do.

20 THE COURT: Please come forward.

21 MR. DRURY: Good morning, Your Honor.

22 THE COURT: Your names.

23 MR. DRURY: Lakayana Drury, co-chair for PCCEP.

24 MS. DUMAS: Good morning, Your Honor. LaKeesha
25 Dumas, co-chair for PCCEP.

1 THE COURT: Good morning. Welcome to both of you.

2 MR. DRURY: Thank you for having us and allowing us
3 to speak today. It has been a very busy nine months. I joined
4 PCCEP. I speak on behalf as one of the members today and also
5 as a resident of north Portland, a high school teacher, and as
6 a black man. A couple of reasons why I joined PCCEP was
7 because I don't want to see one of my students or one of our
8 youth be the next victim of police brutality. I also don't
9 want to see mental health criminalized or people to be
10 endangered because of that. I think that it is very important
11 that we have a body like PCCEP.

12 I want to start by just giving a few "thank yous" to
13 a number of organizations and people who have helped support
14 us, because it would have been impossible to do it. We
15 wouldn't have done it without them:

16 AMAC for helping us during our training process,
17 which was key to getting us off the ground and providing us the
18 background and the work that has been done already.

19 And also the City; the history of policing here.

20 The Mental Health Alliance for supporting us in that
21 process and the training and also for helping out in our mental
22 health subcommittee, which I would say is our strongest
23 subcommittee that we have so far.

24 The City, the Mayor, various representatives for
25 helping getting us off the ground and being supportive but also

1 giving us some space and distance to have enough time to really
2 be an independent body, which is what we seek.

3 Chief Outlaw and the other officers who participated
4 and have come, presented to our meetings, and engaged with us,
5 as they should.

6 Our staff, which we have already noted, has changed a
7 bit, but I really do want to single out Judith and Claudia for
8 their outstanding support, which has been key.

9 Also, the Department of Justice and Jared for
10 providing mentorship to our group and stepping in that
11 capacity.

12 In these nine months, we've done a lot. I'm not
13 going to go over a lot. It has been stated that in our first
14 few meetings we started with leadership structure to carry out
15 work. We put together four subcommittees. We had joint town
16 halls and meetings across the city in order to engage various
17 parts of the community, which is to say has been a community
18 process.

19 We still have challenges as well. We have done this
20 all on the backbone of most of our members being new to public
21 service in this respect, having to conduct all of our business
22 in front of the public, having the turnover of several members,
23 not having a full-time program director, but often it does feel
24 that we do with the support I just mentioned.

25 But through all of this, when you come to our

1 meetings, they are well run. We have prepared, and we have
2 created a platform to go out and do the work. Do I think we
3 have actually completed it? No. We have just gotten to the
4 point where we can start digging in, and I thought that the
5 conditional approval was good initially, in the sense that it
6 allows us to see this as something that is working, and I do
7 think that it is. I think we have created a balance and
8 well-structured format and the committee that can go on and do
9 the work.

10 Some of our challenges have already been stated, but
11 things like seeing people in a room in our meetings that have
12 my skin color or my age, or other groups for that matter, is
13 something that I think we obviously still need to do. I'm not
14 so much concerned whether they show up or whether we engage
15 them in some way. Even if they don't attend the meetings, we
16 are getting out to them. Their voice is being included in the
17 recommendations that we are bringing forth, and I think that's
18 what's is important.

19 I will defer to the community partners as to whether
20 it should be conditional or final approval. That's not going
21 to impact how I go about this work. I know it is not going to
22 about how LaKeesha goes about this work. For us, this goes
23 beyond a settlement agreement or a court order. This is
24 something that's in our conscience and in our DNA to carry out
25 this work, and it is not affecting how our PCCEP members have

1 gone out and done their work.

2 THE COURT: Let me make sure what you are saying on
3 that point, please. If I continue the conditional approval, as
4 opposed to granting final approval right now, you do not see
5 that as interfering with the likelihood of PCCEP's succeeding
6 with its mission. Am I hearing that correctly?

7 MR. DRURY: Yes. I think long-term, obviously, it
8 would, but in the immediate days to come and in our next few
9 weeks and months --

10 THE COURT: What I'm hearing is approximately six
11 months.

12 MR. DRURY: Yes. Like I said, I will defer to the
13 group as to what that looks like.

14 THE COURT: But you don't see any current
15 interference with the ability of PCCEP to succeed based on the
16 fact that it does not yet have final approval from the Court;
17 am I correct?

18 MR. DRURY: Yes, that is correct. We are committed
19 to this for a two-year term, and I will fulfill it to the best
20 of my ability. Also, know that the people who have been
21 selected for this committee, our work was already in progress
22 before we joined this committee. You asked what would you need
23 to see. I think there are a couple of things already
24 mentioned.

25 A full-time program director, I think, would

1 solidify -- somebody who can fully, 100 percent, commit to
2 this. Stability of members. I'm not concerned with any of the
3 members that have stepped down. Again, it has been for
4 personal reasons; things outside the committee. People on the
5 committee feel safe and feel it is a space that they can engage
6 and have their voice.

7 It wasn't mentioned, but we also had, like, an
8 internal retreat midway through January, where we were able to
9 troubleshoot our own issues. I thought that was very healthy
10 and showing we are able to carry out this work and facilitate
11 our own meetings. We had a facilitator, which did a great job
12 to begin with. When they stepped back, we were able to step up
13 and continue with a variety of voices. I think those are two
14 key things.

15 The third thing I would say is not just community
16 engagement but community engagement through our subcommittees.
17 I mentioned our mental health subcommittee has done an
18 outstanding job so far. We heard from (indiscernible) at the
19 last meeting I attended, and that's where I think our work is
20 going to be completed, not necessarily who shows up at the
21 monthly PCCEP meeting, but how are those subcommittees being
22 engaged and work out -- our race and ethnicity subcommittee,
23 our youth subcommittee -- now those committees get out and do
24 the work they need to do, then I'm confident that PCCEP will be
25 successful. So that would be my measurement if we were to come

1 back at a later date: How are those subcommittees looking?

2 All three of those have not been able to get to the
3 way that the mental health subcommittee has been, because there
4 has been a high turnover. Some of the members on those
5 committees have left. Once we are able to get those fully
6 going, which those can also be where community members can sit
7 on those subcommittees as well. So once we can get each of
8 those to have a full body, I think that will be a very good
9 indication where PCCEP is. I just want to be mindful of the
10 enormity of the task that we are looking at.

11 As someone mentioned, we are not going to change
12 police culture in the next six months or racism or anything of
13 that nature. So I think we have to be realistic on what we can
14 accomplish, but I'm very proud of what PCCEP has done so far,
15 and I'm very proud of the members who are serving, and I think
16 we are off to a very good start.

17 Thank you.

18 THE COURT: Thank you. I appreciate those insights
19 and comments.

20 MS. DUMAS: I echo that.

21 THE COURT: Is there anything you want to add?

22 MS. DUMAS: I am LaKeesha Dumas. I feel like PCCEP
23 is functioning as it should right now. It can be better. We
24 have had a few setbacks, and we are doing our best. The folks
25 who are seated are committed to this work. Like me, I don't

1 personally live this experience. I am a person -- a surveyor
2 of police brutality and a lot of things. Now I have good
3 relationships with officers. And I want to see that spread,
4 but trust takes time. It won't happen in the next few months.
5 It might take years. It might happen after my life time.

6 I'm committed to building those bridges and coming up
7 with some strategies to really help improve our relationships.
8 Whether it is conditional or final, like Lakayana said, the
9 work is still going to get done. It won't make a difference,
10 because it is from the heart, not the mind.

11 THE COURT: I appreciate that.

12 First of all, I appreciate both your comments and the
13 insights that you have presented. Will you please convey to
14 all of the members of the PCCEP and all of the people that work
15 on the subcommittees that the Court very much values what they
16 do? I value their contributions, their commitment, their work,
17 and their efforts. I do think what your committee does is
18 very, very important. As I said earlier today, I think it
19 shows a great deal of promise and potential, and I think it can
20 do an awful lot of good.

21 So whether I grant or decline final approval today,
22 that's not the issue. The issue is that you are making good
23 progress, and I encourage you to continue. Will you please
24 communicate to everyone involved with PCCEP that you have the
25 Court's appreciation and recognition? Because you're an

1 important part of the settlement process.

2 Will you do that, please?

3 MS. DUMAS: Yes, sir. Thank you.

4 THE COURT: Thank you, both.

5 MR. DRURY: Thank you.

6 THE COURT: Before we take a mid-morning recess, let
7 me again share with you the list that I have and ask if there
8 is anyone who wishes to participate in public testimony, which
9 we will do after our mid-morning recess.

10 I have Mr. Handleman, Ms. Hannon, Mr. Parks,
11 Ms. Brayfield, Ms. Aiona.

12 Is there anyone else?

13 Commissioner Hardesty. Thank you. Do you want to
14 speak now or after the recess?

15 Anyone else? Can you state your name?

16 (Indiscernible.)

17 THE COURT: Mary, will you make sure I get a copy of
18 the updated list during our recess?

19 All right. Let's take a ten-minute recess.

20 (Recess.)

21 (Open court; proceedings resumed:)

22 THE CLERK: Please be seated.

23 THE COURT: All right. We are back in session.

24 Welcome back.

25 So the updated list I have been given is as follows:

1 I will hear from Mr. Handelman, Ms. Hannon, Mr. Parks -- and if
2 you all want to come up together, that will be fine. I
3 understand there is that request, and that's fine -- followed
4 by Ms. Brayfield, Ms. Aiona, Ms. Zingesser, Ms. Gary-Smith,
5 Ms. Newell, Commissioner Hardesty, and Chief Outlaw.

6 All right.

7 So Mr. Handelman, Ms. Hannon, and Mr. Parks, you may
8 come to the podium.

9 Let me make a request of all of you. We are making a
10 record of this through our court reporter, and so I would ask
11 everyone to speak slowly. I didn't direct that to any
12 particular person.

13 MR. HANDELMAN: Thank you, Your Honor. If I might
14 count, there are ten people. So that gives us ten minutes
15 each, perhaps?

16 THE COURT: Do you really need ten minutes each?

17 MR. HANDELMAN: I know myself and Mr. Parks and Ms.
18 Hannon would like ten minutes.

19 THE COURT: All right. You may proceed.

20 MR. HANDELMA: Thank you. I'm Dan Handelman from
21 Portland Copwatch.

22 On Tuesday, Portland Copwatch sent you an extensive
23 analysis about the suitability of the provisions in the
24 settlement agreement around the Portland Committee on Community
25 Engaged Policing (PCCEP), which also looked at compliance

1 reports.

2 THE COURT: And I have read it. Thank you.

3 MR. HANDELMAN: We would like to go on the record to
4 summarize some of the points we made in our analysis.

5 The COCL and the U.S. Department of Justice think
6 that either 73 or 81 out of 88 paragraphs are in substantial
7 compliance, but Copwatch is among those who have witnessed or
8 read about various deadly force incidents taken note of the
9 PPB's over-policing of houseless persons and/or attended
10 demonstrations attacked by police who do not have the same
11 feeling of progress as these two reviewing bodies. Our
12 analysis looks at 13 areas where the COCL and DOJ disagree.

13 Aside from the specific differences between the two
14 reviewing bodies, PCW called attention to some of the serious
15 issues which indicate the progress seems to be more about
16 quantity -- - did the City check boxes to create certain
17 policies or programs -- than quality? Are those programs
18 resulting in meaningful change?

19 Our general observation about the PCCEP is this:
20 While it is possible the settlement agreement terms could be
21 the basis for a committee to fulfill the tasks outlined in
22 paragraph 142, the City is incapable of creating and nurturing
23 such a body. The failure of the COAB has been attributed to
24 many factors, but the key is that the City of Portland did not
25 give that group the kinds of support it needed to succeed.

1 COCL didn't understand Dr. Bethel's comments earlier either
2 about nurturing them and giving them support without going
3 overboard and telling them exactly what to do. That has been
4 resolved by letting them chair their own committee somewhat.

5 The PCCEP is already far behind in its work for
6 similar reasons. One of their two contracted facilitators quit
7 in late November, the other only came to one early meeting but
8 was not "invited" to be back at others. The main staff person
9 for COAB who helped usher in PCCEP also quit in late November,
10 and she has not yet been replaced, meaning people who have
11 other work to do for the City have been plugging in the hole
12 left.

13 A good example of the City's inability to make PCCEP
14 work is that at several general and subcommittee meetings one
15 of the DOJ's attorneys has been chiming in to suggest
16 procedural and substantive ideas to the PCCEP. The DOJ's role
17 is to monitor the City to be sure they are coming into
18 compliance. Once the DOJ is gone, nobody will be there to take
19 on this role. Thus, to some extent, the PCCEP experiment is
20 already tainted.

21 The City's founding document for PCCEP promises a
22 staff community organizer, a key position, which could have
23 ensured that dozens of Portlanders would have continued
24 attending meetings after the initial meeting in November.
25 However, the COCL says the City only has to fill the

1 administrative position to be in compliance with paragraph 144.
2 The DOJ finds this paragraph is already in full compliance
3 because the temporary staff has, for instance, created a
4 website. However, Copwatch and others in the community have
5 complained it is difficult to find things on this website. For
6 example, PCCEP's first four formal recommendations are posted,
7 but it is not clear whether the City's written responses came
8 as separate documents or whether the Mayor's signature
9 approving of new members is what the COCL and DOJ consider to
10 be adequate responses. The recommendations are mixed in with
11 dozen of other PCCEP-related documents on a single web page.
12 The community survey conducted by DHM Research, in conjunction
13 with PCCEP, was finished in February and released two days
14 after the group's May meeting; Portland Copwatch had to go to
15 The Oregonian's website to find a copy of the survey.

16 At least six original members and one alternate have
17 already resigned from PCCEP, as you have heard. It is not
18 clear with all this turnover how they will be able to generate
19 the work products laid out in paragraph 142. The DOJ believes
20 PCCEP already is in compliance because they recommended three
21 new members to the Mayor and made comments on the Bureau's
22 annual report. One of PCCEP's few powers is to request a
23 certain PPB policy be reviewed for amendments, yet PCCEP has
24 not even made comments on a single Bureau policy in seven
25 months.

1 Truly confounding is the DOJ's assertion that PPB has
2 substantially complied with paragraph 145, asking that they
3 improve their community outreach in association with the PCCEP.
4 Both they and the COCL say the community engagement plan is
5 going to be wrapped into the Bureau's five-year strategic plan,
6 but apparently the PPB's "impressive array" of other outreach
7 activity led DOJ to their full compliance rating. It should
8 also be noted that PCCEP has not received back the data from
9 DHM's community survey when DOJ gave this rating.

10 I should also point out that at the time these new
11 alternates were appointed were not announced by named publicly,
12 some of them who already seated were on the committee and, as
13 far as I know, the alternates aren't serving on the
14 subcommittees, which would be one way to make sure those
15 subcommittees complete their work.

16 Now, we are going to look at oversight. The DOJ
17 thinks the City is already in full compliance with paragraph
18 128, asking for the "independent" police review to be able to
19 conduct "meaningful, independent investigations." The COCL
20 wants to talk to supervisors and officers about how the system
21 is working. However, they do not express an interest in
22 talking to complainants. The COCL notes IPR is unable to
23 access all the documents they need for their investigations
24 because they are not a law enforcement agency, but doesn't
25 suggest the City try changing state law to fix that issue.

1 There is no meaningful analysis of why the COCL's quarter four
2 report showed 20 percent of all allegations "sustained." But
3 only 1.57 of force allegations. Based on IPR statistics, PCW
4 found that only 1 percent of force allegations have been
5 sustained since IPR began functioning in 2002.

6 Neither the DOJ nor COCL delves in any meaningful way
7 into how the Citizen Review Committee's appeals are being used
8 to change Bureau findings. Three findings were changed to
9 sustained in the last two years as a result of CRC
10 recommendations. DOJ incorrectly says CRC only sent one case
11 back for further investigation in 2018. In fact, two cases
12 were sent back and a use-of-force finding was changed from
13 "unfounded" to "exonerated" by the Bureau after reinvestigation
14 in one.

15 The COCL and DOJ both think the Bureau is properly
16 using the Employee Information System, even though traumatic
17 incident flags led to intervention 72 percent of the time,
18 while force only leads to such supervisory action 34 percent of
19 the time and complaints just 11 percent of the time.
20 Supervisors previously admitted not coding interventions into
21 the system for fear of stigmatizing their officers. There is
22 no analysis from either entity about whether interventions have
23 actually changed officer behavior in any way -- another "check
24 box versus quality" question.

25 In fact, as far as outreach, here again, it seems

1 both the COCL and DOJ are more interested in quantity -- how
2 many programs the Police Bureau creates to ostensibly engage
3 with the community -- than quality. Is that fostering more
4 trust in the police? The results of both the internal Bureau
5 non-scientific survey done in conjunction with their five-year
6 plan and the agreement-related survey by DHM show there is not
7 only a general distrust of police -- particularly in
8 communities of color -- but an overarching feeling that they
9 inappropriately use force against both people of color and
10 people in mental health crisis.

11 The DOJ and COCL define "community outreach" in their
12 draft metrics for measuring success to include when police
13 "provide services." Portland Copwatch has cautioned over and
14 over not to count conducting investigative stops, giving
15 tickets, citing people, arresting people, and/or using force
16 against them as "community outreach." It would be fine to
17 change the definition to acknowledge officers need to be
18 professional and treat each stop with the same neutrality and
19 respect as they do with active outreach efforts.

20 Finally, for my part, we urge the Court to comment to
21 the City about the implementation of paragraph 150. The Bureau
22 was supposed to put out annual reports every year since
23 implementation, meaning we should have seen four by now.
24 However, only two of those reports were generated, and only one
25 was presented in the Bureau's precincts. Neither has come to

1 City Council. The Bureau has had to present the 2017 and 2018
2 reports at the same time after the new report allegedly gets
3 published later this month.

4 Moreover, Mayor Wheeler has decided to make a blanket
5 policy never to hear public testimony on reports, defeating one
6 of the main reasons the Bureau was required to present their
7 report to Council in the first place. We hope the Court will
8 instruct the City that taking public testimony is not harmful
9 and may lead to better analysis of the changes being made
10 pertinent to the agreement.

11 Thank you.

12 THE COURT: Good morning, Ms. Hannon.

13 MS. HANNON: We now turn our attention to four areas
14 of key concern to our community: Race, force, oversight, and
15 community engagement.

16 I will speak about race. While relegated to two
17 paragraphs in the report, the issue of race has been a key
18 point of contention since the DOJ issued its initial findings
19 in 2012. Over 25 percent of those shot or shot at by the
20 police are African-American in a city which is 6 percent black,
21 but the DOJ said they could find no pattern or practice of
22 unconstitutional policing.

23 In January, Portland Copwatch critiqued the COCL's
24 defense of the Bureau's 2016 stop data report, yet the April
25 COCL report includes the 2017 stops report as further evidence

1 of "progress" at the PPB. The Bureau asserts African-Americans
2 are naturally being pulled over more because they are more
3 likely to be victims of crime.

4 In a rare occurrence, the City Auditor recently put
5 out a report about the stop data concurring with Portland
6 Copwatch that the benchmark of gang violence victimization is
7 not appropriate to apply to the gang enforcement team (now
8 known as the Gun Violence Reduction Team).

9 The Bureau's use of that benchmark led them to say
10 that the Gang Team was stopping African-Americans too
11 infrequently because they made up 6 to 10 percent less of the
12 stops than those affected by "gang violence." The Bureau is
13 saying people who make up 6 percent of the population should be
14 63 to 71 percent of the Gang Team's stops instead of 57 to
15 61 percent.

16 None of the officials seem concerned that the
17 Bureau's pedestrian stop data indicates the police only stop 16
18 to 25 people per month on foot or riding bicycles, which seems
19 highly unlikely. With just 192 stops reported in 2017, 34 --
20 or 18 percent -- were African-American, with no benchmark for
21 "pedestrians most likely to be victimized" to explain the
22 300 percent disparity in this figure.

23 The COCL and the DOJ both give substantial compliance
24 to paragraph 148 because it only requires the Bureau to collect
25 the stop data and deliver them to the PCCEP. This is a key

1 example of "check box over outcomes," as the disparate numbers
2 have not changed significantly in the years since the DOJ
3 arrived.

4 Similarly, the other section, referring to race, asks
5 the Bureau to collect demographic information for each of its
6 three precincts to help them do outreach and tailor their
7 programs appropriately. The Court should be aware that the
8 Training Advisory Council has formally requested the Bureau to
9 put demographic data into the quarterly force reports, but to
10 date the Bureau has not done so.

11 In March, the training division claimed the census
12 data would not be up-to-date. However, the Bureau's predict
13 data utilized census Bureau estimates, so that is not a valid
14 argument.

15 We now discuss force. Neither the COCL nor DOJ
16 looked at the OIR group's analysis of Portland Police
17 shootings, which came out in February. OIR's data tables
18 indicate deadly force against people in mental health crisis
19 went up from 55 percent to 65 percent after the DOJ agreement
20 was signed by Council at the end of 2012.

21 Moreover, the Bureau's average shootings per year
22 went from four to five since the DOJ came to town. More
23 strikingly, there were seven deadly force incidents in just 99
24 days between the end of September and the beginning of January.
25 The last time there were seven deadly force incidents in one

1 year in Portland was 2006 when James Chasse, Junior was killed.

2 The DOJ continues to support the use of the term
3 "de-escalation" to mean both using verbal communication to
4 avoid using force and to lessen the amount of force already in
5 use. Although the COCL seems to be concerned that some
6 officers give commands and then claim that is de-escalation,
7 they include a quote from an officer telling a suspect,
8 "I didn't want him to get bit by the dog." This is really a
9 threat and not a form of de-escalation.

10 Also, under paragraph 69, DOJ says they looked at
11 four crowd-control incidents, noting the officers' reports
12 could be better, especially around documentation of warnings
13 and de-escalation. They gave the Bureau a pass for a strike
14 (perhaps by a baton) and for using pepper spray on the wrong
15 person, saying that overall the PPB had a "measured" response
16 to a chaotic situation. If a civilian were to "accidentally"
17 use force on an officer, they would be charged with a serious
18 crime. Perhaps the DOJ needs to offer to role play as
19 protesters during the next PPB crowd training and be subjected
20 to such force before minimizing these outrageous actions.

21 Thank you.

22 THE COURT: Thank you, Ms. Hannon. I appreciate your
23 comments.

24 Mr. Parks.

25 MR. PARKS: Good morning, Judge Simon. I'm

1 Peter Parks. I am a community member and member of Portland
2 Copwatch.

3 One area we would like to address in our testimony is
4 whether the City is properly enforcing its rules against
5 retaliation, paragraph 130. The Department of Justice says
6 there aren't enough data to show whether this is being
7 enforced. As it happens, retaliation was the subject of the
8 misconduct case, which led to a sustained finding by
9 City Council on May 16th, the first such finding in the 18
10 years of IPR's operations. The officer in this case told
11 investigators that he wanted to give the complainant a
12 jaywalking ticket because he did not like the way she looked
13 disapprovingly at his armored vehicle and took pictures of it.
14 There is no explanation why he didn't just go up to her and ask
15 her what she was doing rather than selectively enforcing the
16 law on a street where many other people were also "jaywalking."
17 Thus, CRC and a majority of Council found the officer
18 retaliated. It is our understanding that the police
19 association can still undercut any proposed discipline for the
20 officer, which leads to questions about whether officers are
21 properly being held accountable for misconduct, as required by
22 paragraph 169.

23 We also noted that in looking at whether the Bureau's
24 changed use-of-force policy is effective -- paragraph 66 -- the
25 DOJ examined 20 percent of serious force cases but excluded

1 crowd control and shootings.

2 Portland Copwatch appreciated that the DOJ's report
3 notes that Your Honor asked the Behavioral Health Unit to find
4 ways to open its advisory committee's meetings to the public.
5 The DOJ's report says they were going to vote on the idea in
6 April, but apparently the BHUAC has not had a quorum for
7 several meetings and have not yet done so.

8 In their review of paragraphs 118 and 119, looking at
9 Employee Information System thresholds, the DOJ praises the
10 Bureau for modifying their alerts by reporting "Category IV"
11 (low level) force as only half a use of force, resulting in
12 fewer triggers. However, Portland Copwatch continues to
13 believe pointing a firearm at a person should always be counted
14 as a full use of force since it means that the officer thinks
15 they have the right to use deadly force, and an accidental
16 discharge could have disastrous results.

17 Portland Copwatch also continues to disagree with the
18 DOJ and COCL that the City asking officers to do an on-scene
19 walk-through after deadly force incidents meets the intent of
20 paragraph 127. Officers have universally refused to do so.

21 In conclusion, Portland Copwatch continues to be
22 concerned that the Portland Bureau has only made minor changes
23 in its outward behavior, even though it is now collecting and
24 analyzing more reports and data. Once the compliance officer
25 and the DOJ are done with the agreement, we wonder whether

1 PCCEP will take the time to review the Bureau's reports, and
2 more importantly, we wonder who will have the authority to make
3 the City keep collecting data to ensure ongoing improvements,
4 such as they are or may be.

5 It is unfortunate the Court's purview is limited to
6 the confines of the agreement and, to some extent, to the
7 question of whether the parties agree compliance has been
8 reached. If a reasonable person could look at the information
9 in these reports through the same lens that Portland Copwatch
10 does, one would get a different picture about how far along the
11 reforms really are.

12 That's the end of the Portland Copwatch thing, but I
13 would like to take my Portland Copwatch hat off and make a
14 personal comment. I would like to say that I have worked for
15 many years in the immigrant community here. In the past year
16 I've dealt with houseless people in particular, and so I have
17 gained some particular feelings of my own. I wouldn't say I'm
18 an expert.

19 The issue brought by the Department of Justice is the
20 use of excessive force by Portland Police, particularly in
21 cases of interactions with people experiencing mental illness.
22 It is my belief -- and I hear this from many members of the
23 community, there has been very little change in how police
24 treat the citizens of Portland since the settlement agreement
25 was made in 2012. I ask the Court to consider carefully

1 whether the City of Portland's Police Bureau is actually making
2 significant progress.

3 Thank you.

4 THE COURT: Thank you, Mr. Parks. I appreciate your
5 comments.

6 Mr. Handelman, Ms. Hannon, and Mr. Parks, I also
7 appreciate the continued work of Portland Copwatch. Thank you
8 for what you are doing.

9 Ms. Brayfield.

10 MS. BRAYFIELD: Good morning, Your Honor. I am
11 Ann Brayfield. I, once again, thank you very much for opening
12 your court to public testimony. Thank you.

13 I would like to address a couple of things. One has
14 to do with PCCEP, and the other has to do with compliance. I
15 think you invited us to make comments that way too.

16 First of all, I would like to say that with PCCEP I
17 see progress. At the same time I would support you continuing
18 the conditional approval to the amendment. A couple of things
19 that I would really hope that we could see and/or have more
20 clarity about in the amendment, the first is the future --
21 beyond when compliance is substantial across the board and
22 after the DOJ leaves a year after substantial compliance.

23 It is not clear to me how the PCCEP will move forward
24 in the future. I think that Mr. Parks addressed some of those
25 questions, and that is a question that I have. I think before

1 substantial compliance, before the DOJ leaves, it must be set
2 forth very clearly how the PCCEP will move forward with
3 independence, with oversight, and have the ability to handle
4 matters as they come up, whether it concerns the PPB and their
5 actions, shall we say. So that's one I would like to see more
6 clarity on.

7 The second thing is there was a piece in the PCCEP's
8 authority that I would like to see them have some experience
9 with before we move out of the conditional approval, and that
10 is with the Mayor's written approval and after consultation
11 with the other city commissioners, PCCEP is authorized to
12 identify a schedule for review directives not related to the
13 DOJ settlement agreement or key areas of concern, and the PCCEP
14 must provide a written explanation for the request, which will
15 be considered by the Mayor and city commissioners.

16 I would like to see something happen in that regard
17 so that we can see whether this particular structure is going
18 to be effective or not. I mean, I would certainly have
19 concerns that there would have to be so much approval before
20 the PCCEP can take action and look into matters. I would like
21 to see something happen before the end of a conditional period
22 to reassure us all that they will be able to move forward with
23 some authority.

24 And as far as compliance with the settlement
25 agreement goes, I believe that compliance is the tip of the

1 iceberg, and I believe that there is still a gap -- a pretty
2 good-sized gap -- present between data and actual behavior. I
3 think policy has happened. Procedures have been put in place.
4 Data systems have happened. But what about behavior? That's a
5 gap that I would like to see close further before this whole
6 agreement is found to be in substantial compliance.

7 One hopeful thing, when it comes to behavior, I would
8 like to point out is recently, last month, the Technical
9 Advisory Committee brought forward a recommendation to the
10 Police Bureau when it comes to officers' health and wellness,
11 and they also presented that recommendation at the last PCCEP
12 meeting. I'm hopeful that PCCEP will take hold of that and
13 also make that a strong recommendation, because as I look
14 across this state, I look at Bend, I look at Hillsboro, and I
15 look at other places in the country where there have been these
16 health and wellness programs, most of which contain, in part,
17 at least some yoga, some mindfulness, and I think what we
18 see -- and the results is different outcomes on the street.

19 I would say that I think one way or another this
20 needs to happen in Portland because our citizens need to be
21 safe, including our officers, and everyone needs to go home at
22 night.

23 Thank you.

24 THE COURT: Thank you. I appreciate those comments,
25 Ms. Brayfield.

1 Ms. Newell.

2 MS. NEWELL: My name is Nancy Newell. I am a
3 long-time activist here in Portland; 24 years. I've closed
4 nuclear plants -- three of them. The most recent one is a
5 small modular reactor out of Corvallis, and we killed that to
6 the tune of a billion dollars by the time we got to the state
7 of Idaho. We all know here that we have a nuclear plant
8 operating, and it relates to mental illness. It causes autism
9 in children at age 7.

10 And we have one operating -- that's illegally
11 operating -- that the public passed a law 13 years ago to close
12 it, and none of the public officials have closed it. The Mayor
13 is out on peace-bank operations basically. He gave our
14 Bull Run water system, the infrastructure repair that we have
15 already paid for in federal tax dollars, and now we are paying
16 double, with interest, to the people that were exonerated for
17 cheating the American public on their credit cards.

18 What kind of city is this? Where are we living?
19 What are the conditions? When are we going to change these
20 conditions? How is the public going to believe that the
21 process is legitimate?

22 Michael Simon, you certainly have a responsibility
23 here today, because some of these factors are caused by this
24 plant continuing to operate. It is worse than a nuclear
25 weapon. Every day we eat salmon that's loaded with radiation,

1 and they blame it on the dams. Most of the environmental
2 groups don't even talk about it. Most people don't even know
3 it exists. It nearly melted down in 2016, and 28 public
4 utility owners throughout the Northwest never reported it. My
5 friends at Union of Concerned Scientists reported it. What is
6 the atmosphere? Look at it, Judge Simon, in this city.

7 And that's my comment.

8 THE COURT: Thank you very much, Ms. Newell.

9 That reminds me. I've got to turn to the dam case
10 pretty soon, but that's not today's issue. I do appreciate
11 your comments, Ms. Newell.

12 Ms. Aiona.

13 MS. AIONA: Good afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 MS. AIONA: I'm Debbie Aiona, representing the League
16 of Women Voters of Portland. The League has actively monitored
17 the City's Police Bureau for decades with a focus on public
18 participation, transparency, policy development, and
19 accountability.

20 League representatives have attended a number of
21 PCCEP's monthly meetings and have reviewed many of the relevant
22 reports issued every month. In our view the committee is a
23 work in progress. Setting up and organizing a new volunteer
24 City Council appointed body takes time and effort.

25 The committee is made up of sincere, hard-working

1 members with diverse backgrounds and perspectives. As a group,
2 they've started to accomplish their assigned tasks. They have
3 participated in the required training and learning about the
4 responsibilities of public officials and the history and
5 provisions of the settlement agreement.

6 The League appreciated the public briefing on the
7 agreement that we suggested at the last status conference.
8 Inclusion of training materials and COCL report promoted
9 transparency and gave interested members of the public access
10 to useful information.

11 The PCCEP encourages public participation in a number
12 of ways. It gives community members the opportunity to comment
13 throughout its meetings. The meetings are televised live so
14 that people who cannot attend in person can follow along and
15 submit questions and comments remotely. Personnel from the
16 Police Bureau, City Attorney's Office, and the DOJ are present
17 and available to respond to questions when needed.

18 The PCCEP formed subcommittees where recommendations
19 are developed and organizational issues are discussed, although
20 we understand these would benefit from broader participation.
21 The full committee has adopted several recommendations and
22 submitted them to the Bureau. Before the vote was taken,
23 recommendations were presented and discussed, and the public
24 was given the opportunity to comment.

25 Challenges facing the committee include member

1 resignations that result in constant turnover. New committee
2 members have to be screened, appointed, and trained before they
3 can fully participate in the monthly meetings. This takes time
4 and should be a high priority.

5 As far as we can tell, the Police Bureau leadership
6 has not responded to the recommendations the committee
7 submitted in February. Those recommendations apply to the
8 annual report the Bureau is expected to present to the public
9 at precinct meetings and at a City Council hearing. The League
10 is on a number of email distribution lists, but we have never
11 received a notice about the required precinct or City Council
12 presentations.

13 The Bureau should tap into the numerous
14 police-related contact lists and social media outlets to inform
15 the public when those precinct meetings are scheduled. The
16 committee needs more staff support, and the City should fulfill
17 its obligation to supply it.

18 The project manager position has remained unfilled
19 for nearly six months, and the budgeted community organizer has
20 yet to be hired. An organizer likely would help the committee
21 achieve its goal of reaching a broader diversity of community
22 members.

23 Facilitation services also might contribute to
24 meetings that remain inclusive but are more orderly and
25 efficient. For example, with the help of a facilitator, the

1 committee might find it easier to limit public comment before a
2 vote to the item under consideration. This would help focus
3 the discussion and expedite the proceedings.

4 In conclusion, the committee has made progress, but
5 much more needs to be done in order for it to fulfill the
6 committee's expectations and the requirements of the settlement
7 agreement. The City should step up and provide the support it
8 needs to succeed.

9 Then, as you know, we submitted additional written
10 comments that sort of describe our sense of the disconnect
11 between what we are seeing and what this COCL evaluated in
12 February.

13 THE COURT: And I have received those. Those were
14 from you and Ms. Kaye, the President of the League of Women
15 Voters. I have read those and appreciate those, and I
16 appreciate your comments here today. I really do also
17 recognize and appreciate the work in many areas of the League
18 of Women Voters of Portland. I commend you for that, and I
19 thank them for their work.

20 I also want to note that next year, 2020, will be the
21 100th anniversary of the Nineteenth Amendment that gave women
22 the right to vote. You know, that's less than half of the life
23 of this country. It does, on the one hand, show that we are
24 making progress, but it sure does seem to take a long time to
25 make progress. With that said, we're making progress.

1 Thank you for your comments and the work of the
2 League of Women Voters.

3 MS. AIONA: As a follow-up, not only it is the
4 Nineteenth Amendment's 100th anniversary, it is also the League
5 of Women Voters'.

6 THE COURT: Congratulations.

7 MS. AIONA: We are celebrating our birthday next
8 year.

9 THE COURT: Excellent. Thank you, Ms. Aiona.

10 Ms. Zingesser.

11 Good morning.

12 MS. ZINGESER: Good morning.

13 Judge Simon, thank you for the opportunity to speak.
14 My name is Sylvia Zingesser. I'm a NAMI Multnomah family
15 member. I served on the Crisis Intervention Training Board
16 before the Department of Justice settlement agreement with the
17 City of Portland and the Portland Police Bureau regarding
18 excessive use of force on people in mental health crisis.

19 I am one of the charter members of the Training
20 Advisory Council. Today I am speaking only as a community
21 member. I have a son who lives with mental illness. He has
22 struggled with suicidal ideation, severe depression, et cetera.
23 On several occasions we have had to ask for help from the PPB.
24 Many years ago, our first call did not go well when he was
25 having a psychotic break. He does not hear what people are

1 saying to him. We have had Enhanced Crisis Intervention
2 Training officers and ECIT street officers intervene. They
3 have saved his life on several occasions. At one point they
4 actually cut him down from a tree where he was trying to hang
5 himself.

6 I have seen a paradigm change in officer attitude in
7 dealing with my family member. I have seen this paradigm
8 change, as the Training Advisory Council works to recommend
9 training possibilities based on the Council's concerns of use
10 of excessive force of people who are in mental health crisis.
11 After recently reading The Oregonian article about the low
12 marks that the police have received from the community -- I'm
13 assuming that's PCCEP -- the use of force on people in a mental
14 health crisis, particularly in communities of color, I'm
15 concerned about the performance of the police officers in this
16 area and how the TAC might be able to facilitate change.

17 I am making a plea to all community members,
18 particularly community members of color and diversity to apply
19 for serving on the Training Advisory Council, also known as
20 TAC. Quite frankly, the TAC is made up of mostly white
21 community members. It is very difficult for white community
22 members to speak for community members of color and/or
23 diversity. What looks like change to us may not seem like
24 change or help to your community. We need your voice, your
25 input. Otherwise, we may never be able to get where we need to

1 be as a city or as a community.

2 In closing, I want to thank Dan Handelman of Copwatch
3 and Debbie Aiona of the League of Women Voters for faithfully
4 attending the Training Advisory Council meetings and
5 participating in the community comments. It has been very
6 helpful.

7 And, in closing, I did hear that Sean Campbell, who
8 is our chair for the Training Advisory Council, did go to a
9 PCCEP meeting, so that's good. You heard about the wellness
10 program. We are also looking at emotional intelligence and how
11 that might be of assistance.

12 How to apply: Go to the Portland Police Bureau
13 website. Go to the Training Advisory Council. There is
14 information on how to apply for becoming a TAC member. We need
15 your help.

16 THE COURT: Thank you.

17 MS. ZINGESER: Thank you.

18 THE COURT: Thank you, Ms. Zingeser. I appreciate
19 your comments and for you being here.

20 Ms. Gary-Smith. Welcome.

21 MS. GARY-SMITH: Thank you. Again, I'm
22 Sharon Gary-Smith. I chose to sign up at this point as a
23 community member, which I have always been, but I'm most
24 recently a former PCCEP as of a matter of days ago. So I want
25 to talk about, just briefly, that experience; why I, having

1 grown up an African-American female and vertically challenged,
2 all of my life in Portland, Oregon, would take the step to join
3 a committee that could be a committee of struggle, in a place
4 of struggle, and a place where constantly people who look like
5 me, who think like me, who move around like me could be
6 dismissed, disrespected, disregarded, and invisible, despite my
7 face.

8 It was a very strong and difficult decision for me to
9 decide to cast myself in a public that I have always operated
10 in, but I live in the intersection between hope and reality
11 every day of my life. The hope, despite what I know to be true
12 about many institutions that were organized to repress or to
13 marginalize us, who could possibly move to a place of
14 transformation and engagement so that I, my family, and my
15 community could be protected and served as all expect in our
16 community and our larger world.

17 The PCCEP -- which for a long time I called
18 "something other than the second coming of the COAB" -- could
19 be that body that could infuse, could inform, could
20 investigate, could critique, could ask questions, and expect an
21 engagement and a relationship with the Portland Police Bureau,
22 but also the City Council and those decision-makers who want to
23 create a community for all of us to thrive.

24 I look to and I represent and I appreciate the AMA
25 for staying the course, for causing us to, in fact, be together

1 today, and for all of these years that the settlement agreement
2 has been in effect. What I learned as an elder member of that
3 committee, I tried to bring my thinking and my history and my
4 experience. I am a second-generation organizer, activist, and
5 agitator.

6 My mother, the late Bobbi Lu Mosley-Gary (phonetic)
7 said, "You buy and pay for what you want; you don't have to beg
8 for you what need." And I need a community where I'm
9 represented, where I'm safe, where my family and community can
10 thrive. I believe the PCCEP had the opportunity, had the
11 benefit of training, had the benefit of facilitation, and has
12 organized itself, bumps and all, to represent the voices that
13 must be a part of any process of improving this city.

14 Yes, there has been hesitation. Yes, there has been
15 turnover. I'm one of those who not only said that I could not
16 serve in the same capacity but, because of constant technical
17 IT problems, I began to be isolated when I could no longer
18 access the City of Portland email. I did not want anyone to
19 send me things privately that could compromise the system.

20 THE COURT: I'm not following you.

21 MS. GARY-SMITH: Passwords every six months need to
22 be changed. I was on the system, and it was thanks to the
23 administrative support of a brand-new administrator for the
24 PCCEP, Claudia. She and I worked to get me access to the City
25 email. And I was on it, conveying information with my

1 colleagues, being able to represent some thinking, asking
2 questions.

3 At the password changeover, I was dropped and had no
4 access. Despite the number of IT professionals who engaged
5 with me, we couldn't get me back on the system. So I was
6 isolated, left out, unable to convey information or see
7 information. I got frustrated over a period of two months and
8 felt that I didn't know what was going on, when it was going
9 on, where it was going on.

10 That, coupled with some family health issues, caused
11 me to decide that I could not maintain the pace or be a
12 valuable contributor. So I want to say that the City has a
13 process for how you engage their system, I understand. But
14 when it was so tiring to attempt to pursue engagement in a
15 system that you have got to call, you have to leave a message,
16 an IT person will get back to you, the back and forth, finally,
17 they said, "It must be your computer." I said, "It was working
18 until this most recent change, so could it possibly be your
19 system," not in a confrontational way, but in an
20 information-sharing way.

21 What I believe about that experience in the PCCEP --
22 we have a nominal stipend. It could hardly maintain any
23 lifestyle for the time and work we put in. The lack of
24 significant resources for a body that is supposed to be
25 important, these are the kind of things and issues that I

1 believe can crop up. So I want to say that on the record; that
2 my commitment, my engagement, and my hope is that we can move
3 community engagement to something more than PR or scripted
4 interactions to real deep, logical, informed presence with the
5 Police Bureau is my ultimate wish.

6 I am familiar and aware, though, that systems do not
7 move and change just on good intention or sanction, and so I
8 believe that our ability to be collaborative with new
9 administration at the top of the Police Bureau can be more than
10 just window dressing. I believe the commitment and engagement
11 of our new chief, and not just because she is a woman that
12 reflects, looks like, and is as short as I am. (Laughter.) I
13 believe she walks tall, talks with intention, and that if we
14 can move the forces that were there before her, many of whom
15 believe they will be here after her, if we can do it, then that
16 community that is said to be missing will step up because we
17 have watched so long good intentions come and go.

18 I believe the PCCEP, when it is strengthened, when it
19 continues to be engaged, when it critiques and its
20 recommendations are recognized, then we have the substance of
21 things not yet seen. That's the day I'm waiting for, and
22 that's the work I'm willing to continue to follow.

23 Thank you.

24 THE COURT: Thank you, Ms. Gary-Smith. I appreciate
25 your comments and, frankly, your optimism. Thank you.

1 Commissioner Hardesty.

2 COMMISSIONER HARDESTY: Good morning, Judge.

3 THE COURT: Good morning.

4 COMMISSIONER HARDESTY: To the Court, I am very
5 grateful for the opportunity to speak to you today. What a
6 difference a few months make, right? This is where I should be
7 sitting, but apparently I have done this crazy thing, like run
8 and get elected to Portland City Council.

9 As you know, Judge, I have been a proud member of the
10 AMAC since its inception with the goal of having an accountable
11 police force that would work for all of us.

12 Now that I'm sitting in a different seat, I still
13 care passionately about making sure that our Police Bureau
14 actually responds to every community member in a way that is
15 respectful and in a way that actually leads to good, positive
16 community engagement and outcomes.

17 You may know, Judge, that recently a community survey
18 was conducted that did a survey of both police officers and
19 community members to take the pulse of what does the community
20 and what does the police think of the current police force. As
21 you may know, if you've read that survey, there is some very
22 interesting findings. 71 percent of the community members
23 indicated that they do not have a high level of trust in
24 Portland police officers. And if you start talking to
25 communities of color, you will find that trust level is lesser.

1 85 percent of the black residents surveyed had a lack of trust
2 in Portland police; 87 percent of Asian-Pacific Islanders;
3 77 percent of people who are multiracial; and 75 percent that
4 are from a Native-American community.

5 I find those numbers very, very troubling, and I find
6 them troubling because, as the DOJ continues to applaud the
7 changes that have taken place based on the settlement
8 agreement, it is clear that we're not all having those same
9 experiences. It is clear that the community does not feel like
10 we are safer today because the DOJ was requested to come to
11 town and get justice for our community.

12 As you consider whether or not you're going to extend
13 the timeline or not, I'd like to remind you of some things we
14 just haven't heard much about since the settlement agreement
15 was created. The plan to address racial profiling was supposed
16 to be updated and supported by the Community Police Relations
17 Committee that never met after the settlement agreement was
18 filed, and no one that I know of recently has even mentioned
19 the plan to address racial profiling. So that is something
20 that is not considered in this new reiteration.

21 You may also remember the settlement agreement
22 recommended that we start collecting data on mere
23 conversations. As the Auditor's recent survey of the Police
24 Gang and Enforcement Unit showed, mere conversations make up
25 70 percent of those stops, and those stops are not required to

1 be calculated based on a racial impact. However, what we know
2 from the Auditor's report is when 54 percent of the stops of
3 the Gang Enforcement Unit -- now called the Gun Violence
4 Reduction Team -- a committee by any other name that still does
5 the same work and still has the same outcomes will still lead
6 to the same conclusions, which is that African-Americans are
7 significantly impacted by over-policing in this community, and
8 nothing that the settlement agreement has done thus far has
9 done anything to correct that.

10 I do understand that the settlement agreement was
11 totally focused on people with mental health issues or people
12 perceived to have mental health issues, but the DOJ
13 acknowledged that the racial inequality and policing in the
14 city of Portland is something that we should not back away from
15 it. However, we have backed away from it, because we don't
16 talk about it.

17 I want to remind you that the review of stop data --
18 even the data that the Portland Police Bureau collects
19 itself -- has never changed from predominantly impacting
20 African-American and other communities of color. I am very
21 disappointed that the DOJ believes that we are 99 percent of
22 the way to success, because what we know is that since the DOJ
23 has been here, since the settlement agreement has been filed,
24 we are still killing people who have mental health issues, and
25 they're dying because they are doing what they are told to do

1 when they encounter a police officer. But we also know that
2 people suffering from mental health issues will never do what
3 they are told to do because that's the nature of having a
4 mental health issue.

5 What I would like to leave you with is hope, because
6 I am "Ms. Doom and Gloom," and I can tell you all of the things
7 we haven't done and all of the things that aren't working, but
8 I want to leave you with hope, because in my new position I
9 will have the opportunity to totally transform who shows up
10 when a community member calls 911. And I have the privilege of
11 working with the Mayor and my colleagues to introduce the
12 Portland Street Response, which will be a more, I believe,
13 humane way of addressing what the community is experiencing on
14 the street.

15 It is modeled after the CAHOOTS Program in Eugene,
16 Oregon, but here what we're basically going to do is when
17 people call and think a police officer is the appropriate
18 response, our 911 call takers will be able to do an assessment
19 and figure out who the right first responders should be and
20 then deploy those folks. It may be that we are sending a
21 social worker and an EMT. It may be that we are sending a
22 community advocate and an EMT. We are still designing the
23 system, as we speak, but because we've made a financial
24 commitment to actually fundamentally changing how this process
25 works, it is my belief that this will change how police

1 function without being actually having to change how police
2 function, because if we send the right people out, we will have
3 less opportunity for people to be harmed by people who are
4 first responders and who are supposed to protect and serve.

5 I thank you, Judge Simon. You have been very open
6 with the community through this entire process, and I trust
7 that you will make a good decision that will benefit our
8 community

9 THE COURT: Thank you. And don't leave yet. Thank
10 you very much for your comments. I appreciate you being here.
11 I appreciate all of the work you do, and, frankly, those last
12 few words of optimism as well.

13 I have a question for you. You talked about
14 conversations and interactions with police officers. There was
15 something that we talked about several years ago that I have
16 not heard much talk about relatively recently, and I also
17 recall that you were one of the skeptics or people expressing
18 concerns and/or doubts about body cameras.

19 COMMISSIONER HARDESTY: Yes.

20 THE COURT: I would like to ask you and then also get
21 the views of Chief Outlaw too. What's the state of the
22 thinking, or maybe there's a debate. Maybe there is no common
23 view on body cameras. But what's the state of your
24 understanding of pros and cons and where we may be going? I
25 know it is not required under the settlement agreement, but it

1 is not inconsistent with the settlement agreement. We had some
2 talk a few years ago that it may further the objectives of the
3 settlement agreement, but then you also -- and some others --
4 expressed some concerns and reservations.

5 Where are we?

6 COMMISSIONER HARDESTY: I'm so glad you asked that
7 question, Judge Simon. The City of Portland will be hearing at
8 the City Council meeting in the next couple of weeks a proposal
9 for a pilot program around body cameras with Portland police
10 officers.

11 I still today am totally opposed to body cams. I'm
12 really, really opposed to this pilot project because the former
13 mayor gave away any pretend oversight of body camera footage to
14 Portland Police Bureau. So the policy that is not actually a
15 policy yet would allow police officers to view body cam footage
16 before writing a written report and reviewing any community
17 footage before they are investigated by a police investigative
18 entity.

19 I totally oppose us spending \$162,000 on a pilot
20 project for several reasons: One, we could not afford to buy
21 body cams and implement it based on the current costs and data
22 storage needs of body cams. More importantly, we know more
23 today than we knew before about body cams and what the studies
24 that have been done that weren't paid for by the people trying
25 to sell body cams. What those new studies tell us is that body

1 cams does nothing to change the behavior of officers or the
2 outcome for community members.

3 I will remind you, Judge, what I said a couple of
4 years ago. We have seen lots of body cam footage all over the
5 country of community members being brutalized by law
6 enforcement, and we have seen none of those videos lead to the
7 prosecution and firing of police officers.

8 THE COURT: I appreciate those comments. I recall
9 what you said. I do recall the studies from a number of years
10 ago that talked about the existence of body cameras playing a
11 positive role in de-escalating conflict. I recall the response
12 is that they were financed largely by sellers of body cam
13 systems.

14 I do have observations, generally, that -- whereas
15 recollections and testimony can be inconsistent, infallible, or
16 even worse, and even photographs can be partial or
17 incomplete -- but where we have a complete photographic record
18 of what's going on, that tends to be pretty persuasive evidence
19 of what happened.

20 Go ahead.

21 COMMISSIONER HARDESTY: Sorry, Judge. I was just
22 going to say that the challenge for me is if I am at a scene of
23 an incident and I'm required to write a report before I go
24 home, I should not have to review the footage to determine what
25 I was involved in before I write my written report. If we're

1 going to invest millions of dollars in buying the technology
2 and then more millions of dollars in actually storing data, it
3 is imperative that the public get something out of that
4 investment.

5 Based on what we've been presented, the public gets
6 absolutely nothing out of that investment of all those
7 resources, right, because if the police get to decide what the
8 public sees, that's not accountability. That's a police tool
9 that they get to play with, and the public has no access to it.
10 The public doesn't know whether or not a good decision was
11 made. If the police officer doesn't know what they did at the
12 end of the night and they can't write their report without
13 looking at a video, they are in the wrong line of work.

14 THE COURT: As always, you make a very fair point.
15 But just because one particular way of implementing one
16 particular tool has a number of problems and drawbacks doesn't
17 mean that the tool implemented a different way wouldn't have
18 value. That said, it is not my decision as part of this
19 settlement to order anything there. I just want to facilitate
20 the discussion. I appreciate you updating me on the state of
21 the discussion.

22 COMMISSIONER HARDESTY: Thank you, Judge. I
23 appreciate you asking the question, because your name comes up
24 every time we have this conversation at City Hall, and the
25 implication is that you want us to have this. So I would be

1 greatly appreciative if you would put on the record today that
2 you are not weighing in one way or the other about whether the
3 City should invest in this resource.

4 THE COURT: I would say it is not my decision to
5 make. I will even say, by way of full disclosure, I don't live
6 within the city of Portland. I live in
7 unincorporated/other areas, and so I don't even vote for the
8 City officials.

9 COMMISSIONER HARDESTY: Then I will make sure to tell
10 my colleagues that. Thank you, sir.

11 THE COURT: But I do view my contribution here as
12 facilitating discussion, and I appreciate your role in that.

13 Thank you.

14 Chief Outlaw, thank you.

15 By the way, I do want to note, Chief Outlaw, I
16 believe you've been at every one of these hearings since moving
17 to Portland. I recognize that and very much appreciate it, and
18 my guess is so does the community.

19 CHIEF OUTLAW: Thank you, Your Honor.

20 I appreciate the invitation to address the Court. I
21 don't have prepared remarks because I didn't expect to come up
22 here, but now that I do have the opportunity to say something,
23 I do want to go on the record and publicly acknowledge the
24 PCCEP members. There is a lot of time and dedication and
25 commitment that has been put in over several months on a

1 volunteer basis, and I think that's very, very important to
2 recognize, because there are consultants all over the country
3 that get paid a lot of money to do what they are being asked to
4 do. So I want to say thank you again, and I acknowledge the
5 work you do.

6 PPB has a huge vested interest in the success of the
7 PCCEP. I'm not interested in another advisory committee that
8 meets for the sake of meeting. We have blind spots. We don't
9 know what we don't know, and I'm relying upon the PCCEP to
10 provide us with not only recommendations, but with the
11 perspectives and the insight that we don't regularly get,
12 either because we are going a mile a minute focused on one
13 thing over here, or we just don't have that representation that
14 is represented in the PCCEP. So thank you for your time and
15 your effort.

16 I'm not coming up here to defend PPB against
17 everything that has been said, but I also want to say that I'm
18 proud of the work that the men and women at the PPB are doing.
19 We have made a lot of progress. Of course, there is work to be
20 done. There is always work to be done, because we're a
21 learning organization.

22 We all know that the nature and the role of our jobs
23 has changed over the years because of the change and complexity
24 of societal issues and, because of that, expectations of police
25 officers are also changing. Where I personally struggle is

1 balancing those expectations, making realistic expectations,
2 but balancing the expectations of the community, of officers,
3 which are also part of the community, but also making it very
4 clear that we are still law enforcement and we have a job to
5 do.

6 But I believe we can continue to do our jobs with
7 compassion and recognizing the humanity of those who we provide
8 service to. So I, too, come before you today with hope and
9 optimism. All is not lost. We are all partners here. We are
10 not adversarial. I meet with everyone in this room -- not
11 everyone -- but all of the partners at this table in this room
12 on a regular basis, because I welcome, again, the input and
13 feedback. And I think we can get there. It doesn't have to be
14 prolonged or over months and months and months, but I think we
15 will get there. And I am excited about it.

16 Thank you for the opportunity to be heard today. I
17 also want to acknowledge that my executive team is here as
18 well, and you'll be seeing them here in court with me whenever
19 we are in front of you.

20 THE COURT: Thank you. You're always welcome. Thank
21 you, Chief Outlaw, for your comments as well.

22 I have a question for the Government's attorney. The
23 next substantive item on our agenda is a presentation by the
24 United States regarding the compliance assessment overall with
25 the settlement. I also know that the parties have requested

1 about 60 minutes for a lunch break.

2 Do you have a preference? Would you like to do your
3 presentation on compliance assessment now and then we will take
4 a lunch break, or would you like to basically take a lunch
5 break until about a quarter to 1:00 and then we will do the
6 compliance assessment presentation at that time? It's your
7 preference.

8 MR. GEISSLER: Your Honor, it seems more logical to
9 do all of the presentation on compliance together and take a
10 break now.

11 THE COURT: All right. Is that acceptable to
12 everybody?

13 All right. We will be in recess for 60 minutes. We
14 will begin at 20 minutes to 1:00 by that clock. So let's take
15 a 60-minute lunch recess.

16 MR. GEISSLER: Thank you, Your Honor.

17 (Recess.)

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1 (Afternoon session; open court; proceedings resumed:)

2 THE COURT: The United States' presentation on
3 compliance assessment. You may proceed whenever you are ready.

4 MR. GEISLER: Thank you, Your Honor.

5 May it please the Court. We have divided the
6 compliance of the settlement agreement by provisions with my
7 colleague, Mr. Hager, and myself. I will speak to Section 3,
8 use of force; 4, training; 7, EIS; and 8, accountability.

9 Mr. Hager will speak to community-based mental
10 health, crisis intervention, and community engagement.

11 The United States' compliance assessment report filed
12 with this Court provides the most wholesome explanation of our
13 current compliance regulations. We are pleased to take this
14 opportunity today, however, Your Honor, to address a few
15 particular points within that report and then to address
16 Your Honor's questions, if any, with respect to our report for
17 the subject areas that Mr. Hager and I will be covering.

18 Overall, Your Honor, the take-home message is that
19 the City of Portland is now in substantial compliance with all
20 of the provisions of the settlement agreement except the
21 180-day provisions that affect the accountability sections --
22 Section 8 and Section 9 -- where the City is making substantial
23 progress in the community engagement section. This is a
24 significant achievement to be at this point for a settlement
25 agreement that has been in effect from final approval for fewer

1 than five years.

2 Once the City achieves substantial compliance with
3 all sections of the settlement agreement, as Your Honor pointed
4 out this morning and one of the other speakers addressed, the
5 City will need to maintain that state of compliance for a
6 period of one year before the parties come back before this
7 Court and seek final dismissal.

8 With respect to the use of force, Your Honor, in our
9 last compliance report, in 2017, we knew that PPB had adopted a
10 force policy as part of its force policy suites, as directive
11 1010. That policy met the requirements of the settlement
12 agreement, but it's not static. It was still subject to change
13 as the organization changed and subject to challenges.

14 We also reported that implementation of the approved
15 policy would require further training specifically concerning
16 de-escalation. We have now had the time to see the results of
17 the full implementation of the use-of-force policies. In this
18 past monitoring period, we have observed, of course,
19 use-of-force training, implementation, and outcomes.

20 Training has stressed critical decision-making skills
21 and de-escalation that the compliance officer and Department of
22 Justice reviewed and edited lesson plans and instructional
23 material. Like before, PPB trained all officers on the
24 use-of-force policy, both through classroom settings and
25 through demonstration and scenarios, but this time PPB gave

1 even more emphasis to de-escalation throughout the course of
2 the interaction with an individual.

3 Importantly, PPB conducted a separate training, as
4 well, for supervisors on the requirements of force reporting
5 and investigations, including Directive 1010.10. That is the
6 response to the most critical abuses of force.

7 We observed implementation not only through
8 assessment force reports, but also through ride-alongs with
9 field training officers, or sometimes called coaches, where
10 trainees are quizzed force policy requirements throughout
11 interactions of the day. PPB force reports from all sorts of
12 interactions, not just those FTO interactions, showed frequent
13 use of disengagement and utilization of special units, like
14 ECIT. PPB also had implemented more rigorous force audits and
15 provided force use data, both publicly and directly to the
16 Training Advisory Council.

17 So what outcomes have training and implementation
18 yielded? We now have a palpable period of time to assess the
19 outcome of PPB's change-in-force policy. In the fourth quarter
20 of 2017, shortly after the change-in-force policy, PPB used
21 force 226 times. In the fourth quarter of 2018, after more
22 training and the effects of the after-action reviews for each
23 of the force uses, PPB has used force 177 times. That's a
24 decrease of 22 percent.

25 Our review of the sample of force events that

1 actually did occur showed that PPB is now acting substantially
2 in compliance and in accordance with the approved force
3 policies. One of the principal concerns in our original 2012
4 letter, if the Court will recall, was the use of Electronic
5 Control Weapons, ECWs, like tasers and other devices.

6 Data now show, as we have in our compliance report,
7 ECW use has dropped significantly since our investigation
8 began. Even with a slight increase in reporting alone,
9 attributable to the more rigorous reporting requirements in the
10 force policy, PPB maintained a significantly lower level of use
11 of ECWs in the past five years than in the four years preceding
12 that period, and the graph at paragraph 68 of our report
13 substantially demonstrates that.

14 When PPB does use force, there is another outcome.
15 PPB has continued to internalize the value of providing medical
16 aid directly to the subjects rather than waiting for EMS. PPB
17 has practiced that value many times, including in this
18 reporting period, providing immediate medical aid to an
19 individual who was the subject of a non-lethal officer-involved
20 shooting.

21 Next, Your Honor, I would like to turn to Section 4,
22 training. We continue to observe that PPB highly values
23 training. And as I've described today, in the monitoring
24 period, PPB implemented training, stress-equivalent
25 decision-making, and de-escalation. PPB also responded to the

1 need for separate supervisory training, requiring a supervisory
2 in-service, which is in addition to the in-service for all
3 sworn officers.

4 PPB employed the competency-based evaluation system,
5 which we have lauded in the past, by way of tests, group
6 discussions, individual, ECW, and firearm qualifications,
7 physical skills demonstration-type scenarios. Officers had to
8 demonstrate their proficiency in each required skill in which
9 they were trained, and then the instructors would critique the
10 outcome of each scenario. Skills training, like ECW, continue
11 to include an oral quiz during the proficiency demonstration;
12 that is, integration on the policy within the training

13 PPB also shored up two areas that we previously said
14 needed improvement. PPB developed a more comprehensive
15 training plan to address more than just the basic in-service
16 training, as the fire training plan had done. PPB's training
17 plan now covers all training. PPB was responsive to its own
18 needs assessment for training for force training and now
19 incorporates equity and procedural justice, use-of-force
20 decision-making and de-escalation.

21 The second area that needs to be shored up, PPB is
22 now utilizing its learning management software. Your Honor
23 will recall that there was delay in the LMS implementation. It
24 is now tracking all of its training.

25 Your Honor, with respect to Section 7, EIS, we noted

1 in our last report that PPB Employee Information System was a
2 work in progress and not well utilized. Here, PPB's
3 performance has significantly improved. With prompting from
4 the EIS administrator, supervisors are now performing the
5 required timely checks of their subordinates' EIS records,
6 their jacket, if you will, that follows them between
7 supervisors.

8 PPB has also enacted a series of standard operating
9 procedures, SOPs, for the handling of EIS alerts. The alert
10 is, of course, when one crosses a threshold and should be
11 reviewed by a supervisor. As we pointed out in our assessment
12 in paragraph 116, Your Honor, PPB is not closing as many EIS
13 alerts without action; rather PPB is now sending more alerts to
14 the responsible unit managers for their attention and action.

15 Consistent with this Court's approval of paragraph
16 117, as amended now, PPB has also developed SOP 47 on the
17 use-of-force inspector data to identify outliers as compared to
18 peers, supervisors, and groups. The force inspector went even
19 further than what the settlement agreement now requires, and
20 for each of the outliers, he also identified solutions and
21 conclusions that the supervisor should address.

22 Chief Outlaw has gone beyond what paragraph 117
23 requires and has now directed for each of the patrol precincts
24 that PPB conduct risk assessment meetings. We have directly
25 observed two of these meetings. These efforts show that PPB

1 has internalized a risk mitigation framework that goes far
2 beyond and is more robust than what 117 requires

3 With respect to Section 8, Accountability,
4 Your Honor, that has been both the section where PPB has
5 demonstrated some of the most impressive progress during a
6 small training period, but also an area most difficult to bring
7 into substantial compliance. PPB and the Independent Police
8 Review, IPR, implemented long plan changes to the
9 accountability system. With significant input from the
10 compliance officer and the Department of Justice, PPB and IPR
11 each completed revisions to their directives on reporting and
12 investigation allegations of officer misconduct.

13 The City completed extensive joint training with IPR
14 and Internal Affairs investigators together to support
15 consistent investigative standards, even when IPR conducts its
16 own independent investigations. The compliance officer and DOJ
17 attended these trainings directly and provided on-the-spot
18 feedback to better integrate the IPR and IA investigators
19 together in the training.

20 The outcome of the training is promising. Our review
21 of a sample of the investigative files closed during this
22 monitoring period showed that by a preponderance of evidence
23 that supports the PPB's and IPR's findings sustained,
24 exonerated and unfounded.

25 Many of the accountability provisions in the

1 settlement agreement concern reporting and investigation of
2 critical force incidents as well. Our review showed that the
3 City complied with its revised 1010.10 policy for each of these
4 incidents. PPB sought on-scene public safety statements, when
5 necessary, and had witness officers provide on-scene
6 walk-throughs. PPB also issued communication restriction
7 orders, CROs, even when required and even in a very chaotic
8 large situation.

9 The City improved the timeliness of many of its
10 investigations but still struggled with timeliness in some.
11 PPB and IPR are now taking steps to address that longstanding
12 issue. In order to reach substantial compliance, the City
13 needs to implement corrective action plans to address the new
14 complaints and more expeditiously handle them and to identify
15 the times and areas in which the City, IPR, and PPB do not have
16 access to evidence and must reasonably toll the administrative
17 investigation.

18 The City must also demonstrate that changes to
19 investigations in which the Bureau of Human Resources
20 participates have cured the previously delinquent
21 investigations in those cases.

22 Are there any questions on my areas, Your Honor?

23 THE COURT: Yes and no. First of all, I understand
24 your report on the directions toward achieving substantial
25 compliance.

1 You mentioned de-escalation efforts. I know it is
2 not required by the settlement agreement, but let me ask you,
3 does the United States have a view as to the relative benefits
4 and disadvantages of what we have talked about the last couple
5 of years, and that is body cameras?

6 MR. GEISSLER: The United States does not have an
7 official view. We do have cases that have body-worn cameras,
8 and we have been able to use those for the benefit of
9 enforcement and the consent decree --

10 THE COURT: Do I correctly understand from that
11 answer, in the other cases where they have been used, they have
12 been shown to be helpful in achieving the objectives of those
13 settlements?

14 MR. GEISSLER: They have. They have been helpful in
15 ensuring compliance to a policy that is approved by the
16 United States for body cameras. In that respect, that is an
17 action that comports with civil rights, and they have been
18 helpful in providing information that is subject to police
19 interactions and the officers themselves.

20 THE COURT: Thank you very much, Mr. Geissler. I
21 appreciate your report.

22 MR. GEISSLER: Thank you, Your Honor.

23 THE COURT: Mr. Hager.

24 MS. REEVE: Thank you, Your Honor. Jared Hager on
25 behalf of the United States.

1 As Mr. Geissler previewed, I am going to address
2 compliance with Sections 5, 6, and 9. Section 5 is
3 community-based mental health services, paragraphs 88 to 90.
4 We find the City remains in substantial compliance with these
5 provisions. As we previously reported, the City, through PPB
6 and the Bureau of Emergency Communication, or 911 in common
7 parlance, has regularly engaged their system partners to bridge
8 the gap in mental health services, and they continue to do so.

9 PPB works with community partners to increase
10 delivery of services and to decrease the number of contacts
11 with law enforcement. The Behavior Health Unit has two
12 different teams that proactively reach individuals in need of
13 mental health addiction and related care services. Those are
14 the Behavioral Health Response Teams, the BHRT, and the Service
15 Coordination Team.

16 This year, the City expanded the Behavior Health
17 Response Team, adding two units to the three that are required
18 by the agreement. That's paragraph 106. These units pair an
19 officer with a qualified mental health professional from
20 Cascadia's Project Respond, and they have been instrumental in
21 helping connect people with mental illness and frequent police
22 contacts to community-based services so that those people might
23 avoid the next law enforcement contact.

24 The Service Coordination Team, for its part,
25 collaborates with system partners throughout the region. They

1 advise the Oregon Health Authority on implementing the State's
2 mental health performance plan. Locally, they have reduced
3 arrests and increased employment and housing of community
4 members by helping connect people to key services.

5 Separately, PPB's patrol officers continue to use
6 their crisis intervention training and enhanced crisis
7 intervention training to recognize signs and symptoms of mental
8 illness and to engage ambulance services to take individuals to
9 a hospital rather than to jail.

10 Finally, the PPB Behavioral Health Unit Advisory
11 Committee is comprised of and works with a wide array of system
12 partners, including people with lived experience, non-profit
13 service providers, advocacy organizations, governmental
14 agencies, and peer advisers too.

15 As for BHUAC, it has deployed quality assurance
16 measures to better triage calls, including by diverting 911
17 calls away from a police response, when appropriate. For
18 example, dispatchers can and do transfer suicide calls to the
19 Multnomah County Crisis Line when immediate counseling and
20 connection to services is more appropriate and more suitable
21 than an immediate police response.

22 These efforts provide clear benefits to the broader
23 community, and we expect the City to remain engaged with its
24 partners to address gaps in community-based mental health
25 services. These, like other provisions of the agreement, are

1 continuing obligations.

2 Section 6 concerns crisis intervention, and that's
3 paragraphs 91 to 115. The United States has now found the City
4 has substantially complied with all 24 provisions, as spelled
5 out in our compliance report. So what has changed in the last
6 18 months? Well, the City has demonstrated the overall
7 effectiveness of the crisis response model, which consists of
8 three things: A, policy. That's PPB directive 850.20, which
9 is titled "Police Response to Mental Health Crisis."

10 B, training. And that's 40 hours of crisis
11 intervention training for all officers, an additional 40 hours
12 of enhanced crisis intervention training for the volunteer
13 group of 140-plus ECIT officers, as well as annual in-service
14 refresher training that all officers receive on mental health
15 response.

16 And C, its practice, which is backed now by reliable
17 data showing generally successful outcomes and quality
18 assurance measures to ensure continued improvement over time.

19 As a result of these three things, this year the
20 United States gave final approval to Directive 850.20. This
21 policy emphasizes de-escalation and, where appropriate,
22 disengagement. The policy also codifies PPB's efforts to
23 ensure a noncriminal resolution for persons with actual or
24 perceived mental illness, including by referral to mental
25 health services and by hand-off to an ambulance for transport

1 to a hospital.

2 Finally, the policy incorporates the ECIT's dispatch
3 criteria, which reflects the combined good work of PPB and
4 BHUAC to ensure the success of the City's mental health crisis
5 response model.

6 The criteria reflects a contextualized crisis
7 intervention approach to triage mental health crisis calls by
8 directly dispatching ECIT officers to those calls that pose a
9 relatively greater risk of harm to the subject or to the
10 public.

11 We had previously reminded the Court of these
12 criteria, but they recently expanded by adding a new category,
13 and it bears repeating, given that our evaluation of this
14 dispatch criteria, in practice, has resulted in our final
15 approval of the policy.

16 BHUAC will send an ECIT officer to seven types of
17 mental health crisis calls:

- 18 1. Upon the request of a citizen.
- 19 2. Upon the request of a responding officer.
- 20 3. When the subject is violent.
- 21 4. When the subject has a weapon.
- 22 5. When the subject is threatening suicide and has
23 the means to carry through with that suicide.
- 24 6. When a call is from a residential mental health
25 facility.

1 7. The new category, when the subject's behavior is
2 escalating the risk of harm to self or others.

3 I want to emphasize that categories 1 and 2 could, in
4 theory, capture all mental health crisis calls. We want
5 Portlanders to know that if you want a ECIT officer to respond
6 to your 911 mental health crisis call, you just have to ask,
7 and there is no magic set of words. You could say, "Send ECIT.
8 You could say, "Send a specialist mental health officer," and
9 that would work. BHUAC officers and PPB officers are trained
10 on that, and the BHU emphasizes that in both its training
11 internally and in the community.

12 As for training more broadly, the United States and
13 expert consultants have observed firsthand PPB's crisis
14 intervention, enhanced crisis intervention, and the annual
15 refresher training. We have also observed BHUAC's training on
16 recognizing the signs and symptoms of mental health crisis to
17 ensure appropriate dispatch and triage decisions.

18 We have repeatedly found this training to be
19 qualitatively excellent, and we are not alone in that
20 assessment. PPB and BHUAC have received regional and national
21 endorsement of their mental health response training. BHUAC,
22 in particular, has been called on to train other groups
23 throughout the state and the nation.

24 For its part, PPB continues to improve its training
25 by incorporating community members and licensed professionals

1 and by expanding content. As one example, a PPB officer, who
2 is also the mother of a child on the autism spectrum, joined
3 with a professional to lead a very well-received presentation
4 on appropriate interactions with those individuals.

5 PPB also added training focused on juveniles in
6 crisis. As Mr. Geissler and the compliance officer have
7 mentioned in their reports on the training, PPB has folded into
8 its comprehensive plan both notions of equity and procedural
9 justice.

10 Good policy and training are the seeds of good
11 practice, and reliable data quantitatively confirms PPB's
12 improved response to calls involving a mental health component.
13 Over the 19-month period from October 2017 to April 2019, PPB
14 officers responded to over 40,000 calls involving an actual or
15 perceived mental health issue.

16 Force was used in fewer than 1 percent of those
17 calls. The majority of that force is category 4, the lowest
18 level of force, defined as not reasonably likely to result in
19 physical injury. 40,000 calls; fewer than 300 uses of force.

20 Category 2 and 3 force, which includes the use of
21 ECWs or tasers, amount to 78 cases over that 19-month period,
22 or just one-fifth of 1 percent of encounters. This is a
23 substantial and demonstrable improvement from when our
24 investigation began.

25 Now, the United States is mindful that the use of

1 deadly force, category 1 force, is the most consequential power
2 granted to law enforcement. And a handful of these tragic
3 cases have an understandable impact on public perception of
4 PPB's approach to crisis intervention.

5 But in addition to overall force being way down, the
6 reality is that officers connected with PPB's Behavioral Health
7 Unit have saved many lives. PPB's proactive response teams
8 have helped people to necessary life-changing services,
9 including housing and employment, and PPB's patrol officers,
10 the ECIT and non-ECIT, have regularly achieved positive
11 outcomes in terms of transporting those in need to a hospital
12 and avoiding the use of force altogether.

13 The final piece of our approval is data-driven
14 quality assurance. At both PPB and BHUAC, we have seen efforts
15 to learn and to adapt and to improve through the collection and
16 analysis of relevant data. For example, BHUAC and PPB
17 regularly audit 911 calls, in collaboration with system
18 partners, to improve training on ECIT dispatch protocol and
19 recognizing the signs and symptoms of mental illness.

20 These audit programs are designed to outlast the life
21 of the settlement agreement, and they serve as a testament to
22 the City's various bureaus, acting as a learning organization.
23 For these reasons, the United States believes the City has
24 demonstrated the effectiveness of its crisis intervention
25 approach and substantial compliance with Section 6 of the

1 agreement. We expect and we will ensure that the City
2 maintains its compliance for the duration of the case.

3 The last topic I'll discuss is Section 9 on community
4 engagement. That's paragraphs 141 to 152 of the amended
5 agreement. These are conditionally approved terms by which the
6 Court has directed or advised us, I should say, to assess the
7 City's compliance.

8 Now, we talked at some length this morning about the
9 progress of the Portland Committee on Community Engaged
10 Policing, or PCCEP, but taking a step back, the United States
11 has observed that the City, through its various bureaus,
12 engages in outreach initiatives to hear community voices and to
13 advance equity inclusion and improve local government services.

14 PPB's noteworthy efforts include the universal review
15 process that take public comment on every one of its policies
16 every two years. They have various councils and committees and
17 boards, like the Training Advisory Council that you have heard
18 a little bit about today, and they make recommendations too and
19 interface with the training division and numerous other
20 community events that the Bureau engages in.

21 Likewise, BHUAC and IPR, the Independent Police
22 Review, engage in community outreach to help members of
23 Portland's many diverse communities effectively access 911
24 services and lodge allegations of misconduct. IPR, for its
25 part, now conducts a monthly outreach program that they call

1 cultural connections that has met so far the Muslim Advisory
2 Council, the City's Tribal Liaison, and similar groups.

3 As for the PCCEP, we have found that the City has
4 substantial compliance with 9 out of the 12 paragraphs. This
5 isn't to say that those obligations aren't continuing. Like
6 everything else, they're continuing obligations.

7 The City has empowered PCCEP to independently assess
8 the implementation of a settlement agreement. They have
9 empowered PCCEP to solicit information from the community and
10 to make recommendations about policing, and the City has
11 enabled PCCEP members to conduct business without undue
12 influence or interference with their self-direction.

13 Thus, while some community members have criticized
14 PCCEP's failure to exercise a particular power or address a
15 particular issue, we are mindful that PCCEP's volunteer members
16 have allocated their scarce resource of time in a deliberate,
17 and we find, acceptable manner.

18 Its subcommittees, from the gamut, include a
19 settlement agreement and policy subcommittee, a youth
20 subcommittee, a race subcommittee, and a subcommittee for
21 persons with mental illness. Those subcommittees all accept
22 public members, and so I would encourage anyone that is
23 dissatisfied with the direction that the PCCEP is taking to
24 come to a subcommittee meeting and join a subcommittee.

25 Now, PCCEP has begun to successfully discharge its

1 duties under the PCCEP plan. There have been challenges.
2 PCCEP membership has seen over a 50 percent turnover in
3 membership in the first nine months, but most resignations due
4 to relocating, as I mentioned, and the PCCEP and the City moved
5 swiftly to fill the vacancies to refill a pool of alternate
6 candidates. Orientation and training for the new alternates is
7 slated for later this month.

8 Work remains to be done, particularly as it relates
9 to increasing the diversity of public participation and
10 creating recommendations for PPB's community engagement plan,
11 and the City also needs to provide PPB's 2018 annual report to
12 PCCEP for comment and release it to public. Now, that's going
13 to happen later this month. The draft has been formed that is
14 going to PCCEP. Then they need to hold precinct meetings,
15 which I know several members have commented on today.

16 Like the rest of the settlement agreement, I want to
17 emphasize one more time the terms of Section 9, the continuing
18 obligation of the City, and we will continue to monitor PCCEP's
19 regular meetings. We will provide technical assistance, if
20 needed, and report to the Court to ensure PCCEP continues to
21 accomplish the objectives set forth in the plan and in the
22 agreement.

23 Your Honor, that concludes my presentation. I'm
24 happy to answer any questions you have

25 THE COURT: Thank you very much, Mr. Hager. I have

1 one question. It's a very specific question, and it may simply
2 reflect my lack of understanding on this issue.

3 But you mentioned that for persons who are either
4 threatening suicide or exhibiting a risk of suicide, there's a
5 referral made over to the Multnomah County Crisis Line. Can
6 you tell me what's the relationship between the Multnomah
7 County Crisis Line and Lines For Life? Do you know?

8 MR. HAGER: I don't know, but I'm happy to follow up.

9 THE COURT: Well, let me ask. Who here can tell me?
10 Please state your name for the record.

11 MS. PAYNE: My name is Melanie Payne. I am the
12 training manager for BHUAC. Lines For Life is a national
13 nonprofit suicide hotline. They do have a site here that
14 answer calls -- and all over the country. The Multnomah County
15 Crisis Line is Multnomah County funded mental crisis line, and
16 they do all sorts of services. We have a partnership with
17 Multnomah County Crisis Line. We don't have a partnership with
18 Lines For Life. That has been explored, but right now our
19 partnership is with Crisis Line. The crisis line can also
20 connect you to -- they can get into walk-in clinics. They have
21 access to a lot of other services. Lines For Life frequently
22 refers callers to us.

23 THE COURT: That's very helpful. The reason I ask, I
24 know that Lines For Life has received national recognition for
25 their work in Oregon, in Portland, and I was just wondering

1 what that connection was, if any, and that was very helpful.

2 I appreciate that. Thank you.

3 All right. At this time I will invite the compliance
4 officer, Dr. Rosenbaum.

5 DR. ROSENBAUM: Thank you, Your Honor.

6 Dennis Rosenbaum, compliance officer. Since we last
7 appeared before you, the City and the Portland Police Bureau
8 have implemented a number of changes that you've heard about
9 here today and has brought them much closer to achieving
10 substantial compliance with the terms of the settlement
11 agreement.

12 The United States/DOJ has already covered much of
13 that. I apologize for any redundancy. I think they did a good
14 job of listing some of the details. We are doing an
15 independent assessment, as you know. But I do want to say that
16 there is substantial agreement between DOJ and the compliance
17 team.

18 I want to emphasize upfront that the substantial
19 compliance with the agreement does not mean that there is no
20 room for the Police Bureau to continue on a path of
21 improvement, especially in community police relations and
22 public trust. As with all learning organizations, there is a
23 lot of work to always be done. Rather than -- I guess
24 "substantial compliance" means, in my judgment and in our
25 judgment, that the City has completed the reforms required by

1 the settlement agreement and has made a good-faith effort to
2 fulfill this obligation without cutting corners and just
3 checking the boxes and that sort of thing.

4 It also means, especially for the way we have looked
5 at it, that the systems for tracking performance and for taking
6 corrective action are now in place and should help to prevent a
7 pattern or practice of misconduct from developing in the
8 future.

9 So let me just briefly summarize some of the status
10 of each of the major sections that DOJ did.

11 On Section 3, on use of force, we reported that the
12 City and the Bureau have received substantial compliance for
13 nearly all paragraphs and have created a complete system for
14 reviewing and managing use-of-force incidents, and that
15 includes policy changes, training changes, audits, and
16 accountability measures.

17 In addition, our independent review of use of force
18 indicates that the Police Bureau's overall uses of force are
19 consistent with constitutional standards in general. Over the
20 past five years the Bureau has revised its use-of-force
21 directives, provided training on use of force, including Taser
22 deployment, provided training on de-escalation and force
23 mitigation, and implemented a system of review for all
24 use-of-force events.

25 As a result, for example, officers are no longer, in

1 general, confusing command and control tactics with
2 de-escalation during tense interactions, as they were in the
3 beginning.

4 The Bureau's inspector continues to conduct careful
5 reviews of all use-of-force events that they might have for
6 policy training, equipment, and personnel. And in our review
7 of use-of-force cases independently confirm the findings of the
8 inspector's analysis regarding the objective reasonableness of
9 force applications and supervisory reviews of those incidents.
10 So when a problem did arise, the officers did receive
11 corrective action.

12 As required, the inspector also identified trends in
13 use of force at the officer unit and precinct levels and has
14 given feedback to unit commanders, supervisors, and training
15 divisions about these trends. We have also seen evidence of
16 the inspector utilizing a formal feedback system, something
17 which we were insisting on, thereby memorializing the system
18 for future inspectors. So these changes satisfied our
19 remaining recommendations for compliance with Section 3 on
20 force.

21 Section 4 on training, as you know, is at the heart
22 of the reform process, where new or revised policies on
23 use of force, accountability, crisis intervention, early
24 intervention with officers, and other key reforms are
25 translated into officer education and hands-on training.

1 After careful observation and analysis, we have
2 concluded that the Bureau has achieved substantial compliance
3 with nearly all of the paragraphs in Section 4. They have
4 created an effective system of training that includes a careful
5 needs assessment upfront; high-quality training; rigorous
6 evaluation of instructors and students, as we have insisted on;
7 feedback of training results to training administrators; a
8 comprehensive audit of the training program; and user friendly
9 automated recordkeeping system on the training received.

10 If maintained, this training system should be a
11 driving force for continued improvement in street-level
12 decision-making by officers regarding force, de-escalation, and
13 procedurally just treatment of Portland residents.

14 Our assessment of training in 2018 revealed that only
15 three paragraphs had yet to achieve substantial compliance.
16 Two of those had reached substantial compliance by the end of
17 the first quarter of 2019; paragraph 81, requiring an
18 electronic database to capture all training records and one
19 that's accessible to supervisors; paragraph 85, requiring that
20 the inspector audit the training program.

21 The only remaining area of training where additional
22 work is needed, paragraph 84-A1A, which requires the Bureau to
23 increase the use of role-playing scenarios and interactive
24 exercises related to force, ethical decision-making, and peer
25 intervention.

1 And given the importance of procedurally just actions
2 for presenting escalation of tension and for making ethical
3 decisions, we have requested the Bureau's training division
4 give members more opportunities to practice interpersonal
5 skills related to procedural justice.

6 Specifically to achieve substantial compliance, the
7 Bureau is expected to design a training scenario where all
8 officers can rehearse the skills needed for a respectful, fair,
9 empathic, and effective communication with members of the
10 community and receive feedback on their performance. We have
11 reviewed a draft of their scenario training and will be
12 providing feedback to the training division in the near future.

13 Sections 5 and 6 on mental health responses. After
14 extensive analysis over several years, we are now confident
15 that the City is very near to substantial compliance with the
16 terms of Section 6 on crisis intervention and has already
17 substantially complied with Section 5 on community-based
18 mental health services.

19 I thought DOJ has done a very nice job of summarizing
20 some of those details. The COCL team has previously maintained
21 that the dispatch criteria used by the BHUAC should be expanded
22 to allow ECIT officers to respond to more mental health calls
23 because of their demonstrated ability to handle these calls
24 differently than non-ECIT officers.

25 Over the past four years, the City has been

1 responsive by revising the BHUAC dispatch criteria, by revising
2 directive 850.20, and providing additional training to BHUAC
3 employees on multiple occasions.

4 More recently, BHUAC provided in-service training to
5 call-takers and dispatchers, expanding upon previous training
6 and reinforcing the mantra "when in doubt, send them out,"
7 referring to ECIT officers.

8 Initial impact of the training appears positive, with
9 a higher number of ECIT calls in April and May of 2019 compared
10 to those in the months of 2018.

11 We also bring to your attention, Your Honor, that the
12 Bureau has resolved data reliability issues that we had raised
13 earlier in paragraph 105. Through the training of supervisors
14 and unified BHUAC and Bureau data set and quality assurance
15 checks on mental health templates submitted by officers, the
16 Bureau is now able to more accurately be able to document
17 interactions with persons with mental illness.

18 Looking at the larger picture, we want to emphasize
19 that the Bureau and the City have an excellent overall system
20 in mental health response compared to what we have seen in
21 other places. When considering the Behavior Health Response
22 Team and the Service Coordination Team, working in conjunction
23 with the ECIT program, we believe Portland has a comprehensive
24 strategy that mitigates the original concerns articulated in
25 the settlement agreement.

1 Under Section 7, the Bureau is required to maintain
2 and enhance its Employee Information System, EIS, to more
3 effectively identify at-risk employees, supervisors, and a team
4 to address potentially problematic trends in a timely manner.
5 This includes the requirement that commanders and supervisors
6 conduct prompt reviews of EIS records for both current and new
7 employees under their supervision and to document the review;
8 that the review has occurred in the EIS performance tracker.

9 To achieve this, the Bureau has created a system that
10 notifies and reminds managers to complete their EIS reviews in
11 a timely manner. Our analysis revealed that compliance rates
12 were low at the start, but the Bureau's enhanced notification
13 and reminder system for EIS reviews has led to nearly 100
14 percent compliance within the past six months. Furthermore,
15 the between-unit differences that were observed have largely
16 disappeared with nearly all units completing the required
17 reviews on time.

18 The Bureau has also enhanced its EIS to identify and
19 address problematic trends at the individual group level.
20 Intervention rates for alerts related to force have increased,
21 suggesting that supervisor in-service training on this matter
22 was effective.

23 Additionally, the Bureau has begun performing
24 intervention for officers to receive EIS alerts for trends in
25 administrative complaints.

1 For paragraph 117, the Bureau continues to use force
2 audit data to identify groups, units, and supervisors.
3 Responding to our recommendations, the Bureau has revised its
4 SOP 47 to formalize the process for identifying outliers,
5 formally identifying groups to the RU managers, and managing
6 group-level transfers to improve trends.

7 Finally, as advocates for a more evidence-based
8 approach to policing, we are pleased that the Bureau is using a
9 risk management model to further identify potential problematic
10 officers, supervisors, and groups. This risk management
11 approach, which involves the simultaneous analysis of multiple
12 variables that may help to predict at-risk employees and
13 at-risk behavior, goes beyond the requirements of a settlement
14 agreement and represents a more comprehensive approach to
15 potential problematic trends.

16 Section 8, on officer accountability, last year we
17 reported progress made by the City to achieve due process
18 during administrative investigations and enhanced civilian
19 oversight. The independent police review, or IPR, has
20 continued to take on more cases, and we continue to believe
21 that additional civilian oversight is a good trend for Portland
22 and for the nation as a whole. However, this translation has
23 not come without a price. Such investigations were new to IPR
24 and IPR investigators, and so this required policy changes,
25 joint training, and other adjustments, as some others have

1 discussed.

2 But as we reported, IPR administrative
3 investigations, in general, are being done in a comprehensive
4 manner and are producing incredible and reliable findings.
5 Perhaps the most challenging requirement of the entire
6 settlement agreement is paragraph 121, which requires the City
7 to complete administrative investigations within 180 days of
8 the receipt of a complaint of misconduct or discovery of
9 misconduct by other means.

10 The Bureau and IPR have struggled with this
11 requirement but have made progress completing the various
12 stages of administrative investigation in the past six months,
13 as we have documented in our report empirically.

14 Over the past, the Bureau, IPR, DOJ, and COCL have
15 been engaged in a serious dialogue about this issue. Both the
16 Bureau and IPR have critically reviewed their protocols for
17 conducting administrative investigations and have carefully
18 analyzed the reasons that cases have exceeded the 180-day
19 timeline. So we are pleased with that kind of empirical
20 analysis.

21 A number of factors that can reasonably extend an
22 investigation beyond 120 days for good cause have been
23 identified, such as the number of alleged officers, the number
24 of witnesses, the number of allegations, the nature and
25 seriousness of those allegations, and the need for outside

1 forensic evidence testing, just to name a few.

2 However, there are other factors, such as a lack of
3 adequate supervision and management structure, that need to be
4 corrected and are in the process of being corrected. This
5 week, the DOJ, COCL, and the City met to discuss this issue in
6 detail and to evaluate the factors that inhibit expeditious
7 investigations.

8 Some of the larger delays have occurred at IPR, and
9 in response they have proposed a new project management
10 structure that includes timelines for each stage of the
11 investigation, stronger supervision and management oversight,
12 and more support for our investigators who are facing difficult
13 cases or heavy workloads. We believe this is a reasonable
14 approach to correcting this problem. Also, IPR and Internal
15 Affairs hold weekly meetings to ensure that cases are moving
16 ahead with fewer interruptions, although keeping their
17 independent assessment.

18 As a result of these corrections, Your Honor, the
19 City has made considerable progress on this issue, as reflected
20 in the reduced time needed to complete various stages.
21 However, we wish to emphasize that efficiency is not the only
22 consideration. The community, as well as our legal system,
23 expects a thorough and fair investigation of the facts and
24 carefully develop findings based upon the preponderance of the
25 evidence, and that takes time.

1 Section 9, as you know, requires the City to create
2 and support a system of community engagement around the terms
3 of the settlement agreement. To achieve this goal, the
4 Portland Committee on Community Engaged Policing, or PCCEP, has
5 been empowered to replace the COAB. This is obviously the
6 topic of the day

7 THE COURT: Or at least the morning.

8 DR. ROSENBAUM: The morning for sure.

9 Under Section 9, the Bureau is also expected to make
10 additional community outreach efforts to promote confidence in
11 the Bureau and facilitate police-community relations. The
12 Bureau has done a lot of that, especially under the new chief
13 with their five-year outreach plan. I'll talk about that in a
14 second.

15 In our fourth quarter report of 2018, we covered
16 community engagement that the Bureau is doing in considerable
17 detail, and we later provided an update in our first quarterly
18 report in 2019.

19 Let me briefly summarize some of this work, first of
20 the PCCEP and then the Bureau.

21 Our analysis suggested that the City invested
22 considerable time and resources in recruiting and training and
23 supporting members of the PCCEP, and we observed this entire
24 process. Since then, PCCEP has continued to function as a new
25 body that seeks community input and makes recommendations about

1 ways to improve police-community relations. PCCEP has met
2 regularly since their inaugural November meeting, including
3 holding town hall meetings in January and April of 2019 to
4 review our compliance findings and conduct other business.

5 PCCEP has established four subcommittees, as people
6 have already discussed, though attendance at these meetings has
7 been sparse. Since PCCEP was originally seated, several
8 members have resigned, as has been discussed, but alternatives
9 have been elevated to fill these seats, and they're operating
10 at near full capacity.

11 More importantly, there are a number of people in the
12 pool of alternates, and the City's staff have finalized a
13 process to ensure that the alternate pool is repopulated, as
14 needed.

15 Our overall assessment, frankly, is that PCCEP is on
16 track to function as a legitimate body of community engagement
17 and feedback on the performance of the Bureau. The members,
18 from our perspective, are very talented, thoughtful, and
19 motivated to make a difference in police-community relations,
20 and you've heard from them here already.

21 As we would expect from an independent body, the
22 members have not been elected to express criticism of the
23 Portland Police Bureau, which I think is equally important. In
24 sum, we believe this group, if supported by the City and if
25 supported and endorsed by other stakeholders in Portland, has

1 the capacity to engage effectively with the Bureau and the
2 authority to hold them accountable for strategies linked to
3 public trust.

4 Substantial compliance for paragraph 142 will be
5 assigned when PCCEP can complete the work required in the PCCEP
6 plan and can contribute to the Bureau's community engagement
7 plan. We are also tracking the City's progress to hire a PCCEP
8 project director, project manager, and community organizer.
9 The first round of interviews with this project director
10 occurred in early June, and our understanding is that the
11 hiring is expected by the end of this month.

12 Quickly, to the Bureau's work in community
13 engagement, as we described in our reports, the Police Bureau's
14 other community engagement work has been extensive, working
15 with marginalized and at-risk communities through various
16 outreach programs and activities. The remaining community
17 engagement task for the Bureau to achieve substantial
18 compliance, under paragraph 145, are, A, to develop a working,
19 transparent working relationship with PCCEP; and B, to develop
20 a reasonable community engagement plan with input from PCCEP.

21 At the March PCCEP meeting, Chief Outlaw and her
22 staff presented the community engagement component of the
23 Bureau's five-year strategic plan to provide a framework for
24 developing the community engagement plan, as required under the
25 settlement agreement, and seek community input from PCCEP.

1 Furthermore, the Bureau has attended PCCEP
2 subcommittee meetings and distributed a template for receiving
3 community input on a community engagement plan.

4 A citywide survey, by the way, of community members,
5 required in paragraph 146, has been developed, has been
6 reviewed by PCCEP, and our professional opinion is that the
7 survey methods were sound. I am happy to talk to you about
8 that more, if necessary.

9 The survey is complete now. The results have been
10 delivered to PCCEP and released to the community. So the final
11 step to achieve substantial compliance is for the City and
12 PCCEP to use the results to inform the work of the PCCEP and
13 the development and implementation of the community engagement
14 plan.

15 The Bureau has completed the requirements of 147 to
16 collect and distribute precinct level demographic data that can
17 be used for outreach and policing programs specifically
18 tailored to local residents and to inform the work of PCCEP.
19 Using Census Bureau data, the Bureau has now delivered this
20 information to PCCEP containing these precinct-level
21 demographic statistics.

22 The Bureau has also collected, analyzed, and reported
23 demographic data on police encounters with the public, as
24 required by paragraph 148, to examine potential bias and police
25 stops by race, age, sex, and mental health of a community

1 member. The Bureau has submitted these data as well to PCCEP.

2 Paragraph 149 required the Bureau, the DOJ, and COCL
3 to agree on a set of metrics and present them to the PCCEP for
4 review. That work has been completed, Your Honor, and we
5 agreed on several indicators of community engagement and
6 outreach for the Bureau. I won't list those now, but I am
7 happy to, if you'd like.

8 Finally, in paragraph 150, it requires the Bureau to
9 issue an annual report with specific content. The timely
10 release of these reports have been a problem in the past, but
11 that has been corrected this year. The final version of the
12 2017 report has been released, and we are awaiting the 2018
13 report, which the Bureau anticipates releasing this month. We
14 can assign substantial compliance with paragraph 150 when the
15 Bureau is completed precinct presentations on the report and
16 has presented its annual report to the City Council.

17 Thank you, Your Honor

18 THE COURT: Thank you, Dr. Rosenbaum. I appreciate
19 that presentation.

20 All right. At this time let me invite the AMA
21 Coalition to discuss overall compliance with the agreement.

22 Is that you, Ms. Albies?

23 MS. ALBIES: Good afternoon, Your Honor. Dr. Bethel
24 will be presenting.

25 THE COURT: Dr. Bethel.

1 DR. BETHEL: Good afternoon, Your Honor.

2 The City has made progress on the settlement
3 agreement. It seems to be that there are some discrepancies as
4 to what areas are in compliance and what areas are not in
5 compliance or in substantial compliance. There really needs to
6 be a meeting of the minds between the COCL, the DOJ, and the
7 City, as well as the other partners, to help determine and
8 eliminate these areas where there is still compliance needed
9 and what has been complied with.

10 We must ask who determines the level of compliance
11 for the settlement agreement. Certainly it should not be the
12 City alone, nor should it be the community. I think COCL was
13 the one assigned to monitor this, as that officer, and DOJ to
14 concur, and we want to see that happen as quickly as possible.

15 We want to come back again and talk about the PCCEP
16 for just a few moments and talk about the budget for the PCCEP.
17 We still believe that the organizing community organizer is
18 needed. This is not an area or a position that is optional.
19 It is a necessity to bring about full implementation and
20 encourage potential for the PCCEP.

21 Even if, as the PCCEP members/co-chairs implicated
22 this morning, are of the opinion that the subcommittees are the
23 place to get most productivity and work done and if they would
24 get out and engage the community, they believe that would be of
25 great help for accomplishing what PCCEP is to do, even if they

1 did not have the community in attendance at the meetings.

2 Well, even at that point, to give a voice of the community, you
3 need an organizer to help out, because currently and presently,
4 at this time, that is not being done. The potential is there
5 to see that happen. We feel that this organizer is very much a
6 necessity to have.

7 We also believe that transparency is being asked for
8 and needed in the area of knowing what is the total budget for
9 the PCCEP, not just a line item, but the line item detailed and
10 breakdown. What is there for the members of the committee to
11 be supported? What are the resources there for the community
12 organizer? For the project manager? We feel that would be of
13 help for us to further understand how PCCEP is to be
14 implemented and carried out.

15 We ask the question: What was the intention of the
16 settlement agreement? We've had many different answers. But
17 basically it was to reduce the force of those against mental
18 illness or perceived to have mental illness and also, in
19 addition to that, we would have to talk about the use of force
20 against others, which is disparate to those persons of color.

21 It is still disheartening that those numbers are not
22 going down but seem to be rising, even since the Department of
23 Justice has come to town. Is the settlement agreement work
24 being done, accomplishing what it was designed to accomplish?
25 The United States referred to the work in progress but was not

1 effectively being used -- the EIS information system -- on
2 officers.

3 We looked at the report from the COCL's quarterly
4 report, and it shows that supervisors intervene at a higher
5 percentage in traumatic incidents with officers -- about
6 72 percent -- as opposed to when it is dealing with those in
7 terms of force. The intervention has been 38.7 percent as
8 compared to 71.9. Then when we talk about complaints, it is
9 only 11.4 percent in terms of interventions.

10 We believe that when these thresholds are met,
11 interventions need to be just as effective and applied equally
12 between those of use of force and community complaints by
13 supervisors as they are dealing with those of traumatic
14 incidences with officers.

15 We concur with the United States that accountability
16 has had some progress, they say. But we concur with the fact
17 that it is the most difficult to bring into compliance. And
18 one continues to ask the question: Why is there so much
19 resistance and what can really be done to bring about
20 compliance? If it is the most difficult area -- or one of the
21 most difficult areas -- then it seems that we must begin to
22 apply some more strength to bring about cooperation to bring in
23 compliance the accountability of what we had. We are still
24 finding that we're finding more and more no true bills being
25 returned from grand juries and more and more people are being

1 impacted on the force that is being used on them by the
2 Portland Police Bureau.

3 We appreciate the fact that the use of force is down
4 with regards to people with mental health issues or those who
5 are perceived to be in mental health crisis. We also agree
6 with the Department of Justice that deadly force incidents have
7 tremendous impact on the public's perception of the Portland
8 Police Bureau's efforts in effectiveness in engaging safely
9 with people in crisis, but so does Portland Police Bureau's
10 response to those critical incidences. Lack of accountability
11 exacerbates community distrust in Portland Police Bureau in the
12 wake of these incidences. 77 percent of people, typically
13 African-Americans, saying they lack trust in the Bureau really
14 brings us back to the point that we must have a coming together
15 to build and develop more and more trust between community and
16 the Bureau.

17 For a moment let me address the IPR and the lack of
18 access that we're seeing of them to all confidential
19 information, such as CAD reports, et cetera. There needs to be
20 some mechanism for IPR to gain access to these types of
21 information so they're able to conduct a more thorough
22 investigation. We're still awaiting the release of the 2018
23 report that the Bureau is to present as well as to the precinct
24 and to the Council, and yet, to date, it is our understanding
25 that no presentation has been made to Council.

1 As we stated in our report to the Court, in order to
2 have effective community relations, to work on repairing the
3 harm of the past, we must have some type of truth and
4 reconciliation being done. We need not only just refer back to
5 the report of black and blue. We may not only just refer back
6 to the last several months of things that have happened. We do
7 not look at our past to define us, nor do we look back to the
8 past to be our destiny. We look back to the past so that it
9 educates us, to bring us about to progressive change, and not
10 just enough change to ease the pressure, not just enough pain
11 to change to remove the media coverage, not just enough change
12 to say we're trying, and we dress it up with some report of a
13 lot of quantitative things done, but no qualitative results
14 that are coming.

15 We call upon the collaboration of the partners, the
16 Department of Justice, the City, PPA, MHA, AMAC, and the
17 community to work on the settlement agreement and bring this to
18 a win/win for all of us.

19 I will conclude with this in this short period of
20 time today: The City of Portland is a loving city. I was
21 explaining to someone yesterday why I came to Portland and how
22 impressed I was about the City when I first got off the plane
23 and did some exploration around the City. I have been here now
24 over 25 years.

25 I don't find it to be a place that is anti-police,

1 nor do I find it to be a place to be termed as a "cesspool." I
2 must understandably recognize that we have issues. What city
3 does not have issues? But I celebrate our livability. I
4 celebrate that we do have the ability to sit around the table
5 and discuss issues, even though we may not agree on all of
6 those issues, at least we have a seat at the table to talk
7 about those.

8 Understand that an encounter between a person with
9 another person colors the opinion of that person if it does not
10 go in a certain way, and the same as it is with institutions.
11 Where we are today with our struggle and our fight for justice
12 in quality, with those with mental health issues, illnesses, or
13 perceived; that of the use of force and excessive use of force
14 and all the other ramifications we have in the settlement
15 agreement did not get there overnight. It will not go away
16 overnight. But it's time for us to recognize that we really
17 have been and really began to do something about them, and
18 let's move the color off the palette and blend it together so
19 we can get a great portrait, a masterpiece, that the City of
20 Portland really is for all of her citizens.

21 Thank you, Judge

22 THE COURT: Thank you, Dr. Bethel.

23 Dr. Bethel, one of the points that you made in your
24 oral comments was that the IPR is having difficulty getting
25 access to certain needed documents from the Police Bureau.

1 That's also, I noticed and I read, referenced in the AMA's
2 written comments as well.

3 Can someone here tell me a little bit more about the
4 progress that's being made about how are we going to get a
5 handle on that issue? AMA may want to start or go to the
6 United States.

7 Mr. Geissler.

8 MR. GEISSLER: Your Honor, there are a few categories
9 of documents. There are dispatch records from the CAD system,
10 as there are LEDS records. The LEDS records are governed by
11 state law, and the FBI also audits the data from NCIC. Those
12 records, to my understanding -- and the Police Bureau can be
13 more expert on this -- those records are only available to law
14 enforcement officers, not to the Independent Police Review.

15 The CAD data, and such, are provided to the City.
16 Perhaps the City could generate a system where IPR could have
17 direct access to the terminal. But, in either case, the
18 solution that has been in place and could continue to work is
19 to have access from IPR, making a request to the Police Bureau,
20 and the Police Bureau timely responding. If the data show that
21 IPR cannot get the data in a timely fashion, then we need to
22 address what is the adequate remedy. The adequate remedy may
23 not be trying to change state or federal law. It may be having
24 the Police Bureau respond in a timely fashion or giving them
25 direct access if they walk across the street.

1 THE COURT: So where are we in that problem? Have
2 they made requests for documents that they believe have not
3 been timely provided? Where are we on that issue?

4 MR. GEISLER: We did a postmortem on the series of
5 cases that IPR conducted independently. That took more than
6 180 days. We sat with Mr. Berry, with IPR, and went through as
7 a group. Of those cases that IPR ran independently, and they
8 would need the data on their own and just not have internal
9 affairs do an investigation, none of those cases involved an
10 instance in which IPR identified to us a lack of timely
11 production of LEDS data or CAD data.

12 I know it would be easier and more expeditious,
13 perhaps, if they had the data immediately available themselves.
14 But it doesn't appear to be the driver, at least for that
15 postmortem of the cases. It doesn't appear to be the driver of
16 the late cases.

17 THE COURT: Does the AMA have any further insight
18 into what the nature of the problem is in terms of does the AMA
19 perceive that IPR has been requesting information and not
20 getting a timely response, as opposed to do I understand the
21 fact that they don't have a realtime delay to request some of
22 these things?

23 DR. BETHEL: Judge Simon, we refer, again, to the
24 COCL's quarterly report where it says "related to this," and it
25 is talking about the IPR access to documents. These are

1 remaining issues with administrative investigations beginning
2 on page 77 of that document, and may I read this short
3 paragraph? "Related to this, one investigator noted that IPR
4 does not have direct access to confidential information," which
5 ultimately impedes timely and comprehensive investigations.

6 "Subsequent conversations reveal that because IPR
7 investigators are not law enforcement, information on records
8 management system and computer-aided dispatch records at times
9 requires redaction. Determining the legality of IPR
10 investigators accessing confidential and/or system documents is
11 best reserved for those with better knowledge of Portland City
12 Code and state law. We are, therefore, unaware whether this
13 issue is one that cannot be avoided or simply requires
14 additional background of IPR investigators. However, where
15 possible, the Portland Police Bureau and the City should work
16 together to resolve outstanding issues related to document
17 access."

18 We call attention to that paragraph because the COCL
19 brought it out in its report, which is open, and all of us have
20 seen, and that's why we are addressing the issue that we have
21 concerns that they are not being able to access the information
22 they need to do timely and thorough investigations.

23 THE COURT: Dr. Rosenbaum, do you have any insights
24 on this issue? On the one hand, one can say you can't access
25 it because you don't have the ability directly to get online

1 information because you're not law enforcement, but on the
2 other hand, you can access it by making a request. On the
3 third hand, making a request is not necessarily productive if
4 either the response to the request takes too much time or
5 results in something that has too much redaction to make it
6 unusable.

7 Any insight?

8 DR. ROSENBAUM: Mr. Christoff will be addressing
9 this.

10 MR. CHRISTOFF: Good afternoon, Your Honor. I am
11 Tom Christoff, a member of the compliance officer team. With
12 reference to the lack of access, one of the things we had done
13 for, I believe, our quarter four 2018 report, because of the
14 joint training that IPR and IA had gone through because of the
15 changes to the system, we interviewed both IA investigators as
16 IPR investigators.

17 One of the issues that was identified, and it was one
18 of a number of issues identified, was this lack of direct
19 access. When we had spoken with folks from PPB, they informed
20 us that if IPR does make a request, that that request gets
21 priority over any other request for information. It was an
22 issue that was identified by investigators, but like I say, it
23 was one of many.

24 I understand that the City has attempted to make
25 changes to the state of law, but they have been unsuccessful.

1 Again, it was a question of -- I don't know if it was -- we
2 don't have any indication that it is the cause of a delay over
3 180 days. It was just one of the of issues that IPR
4 investigators brought to our attention.

5 THE COURT: Thank you very much.

6 MR. CHRISTOFF: Thank you.

7 THE COURT: At this time I will call on the Mental
8 Health Alliance for its views on overall compliance.

9 Mr. Chavez.

10 MR. CHAVEZ: Good afternoon, Your Honor. I would
11 also like to call upon our MHA member, Jan Freidman.

12 THE COURT: Of course. Welcome.

13 MR. CHAVEZ: So we would echo the concerns of AMAC,
14 as far as where we are in the implementation of the overall
15 settlement agreement.

16 Additionally, we would like to highlight a couple of
17 things that we cited in our brief. Back in the hearing in
18 October, when discussing qualitative metrics, one of the ones
19 that Mr. Renaud cited was whether or not members of PCCEP would
20 feel comfortable calling the police themselves if they were in
21 crisis.

22 As you can see from the materials that we produced,
23 unfortunately, deadly force contact with police have
24 unfortunately affected persons with mental illness, which
25 brings our belief that we are far -- perhaps not far -- but we

1 need more time to work on that before we could ever say we are
2 in compliance.

3 And we would like to take the opportunity, since it
4 was questioned earlier regarding body cameras, MHA does have
5 some positions on whether or not body cameras would be
6 appropriate, particularly as it relates to persons with mental
7 illness. So I would just like to convey some of our beliefs.

8 If there was, in fact, a body camera program
9 developed by the City and piloted, we would be okay with that
10 so long as it follows our recommendations, particularly that
11 the cameras will not be operated while on hospital property,
12 including hospital parking lots. It will not be operated on
13 welfare checks; when a person is not a suspect or in an
14 ambulance or being assisted by medical personnel; when the
15 police are intervening on suicide or self-harm calls; a request
16 for medical assistance; on property of a mental health agency,
17 an alcohol and drug facility, or housing owned and operated by
18 such an organization.

19 They should not be used on property for clean and
20 sober housing, such as the Oxford House. They should not be
21 used on property or on a person that is not a suspect or known
22 to be suspected to be experiencing symptoms of mental illness,
23 have a brain injury, or have an intellectual disability.

24 Cameras should not be operated when a person is not a
25 suspect and is known or suspected to be intoxicated or under

1 the influence of drugs, or when a person is not a suspect in an
2 alleged sex crime that has been committed against them, or when
3 a person is not a suspect and is known or suspected to be in
4 shock, or without permission of a parent or guardian when a
5 person is a minor, or against the wishes of that guardian and
6 conservator.

7 THE COURT: When you say that it shouldn't be used on
8 some one who is intoxicated or suspected of intoxicated, so if
9 someone is making a disturbance somewhere, and the police
10 interact, it's your position that if it appears that person is
11 intoxicated, and that may be playing a role in that
12 disturbance, a body camera shouldn't be used?

13 MR. CHAVEZ: Specifically when they are not a
14 suspect. We believe if they are a suspect of that matter, if
15 they are causing a disturbance, or in the circumstance of a
16 disturbance that would give rise to them being a suspect, in
17 which case a camera would be appropriate. But if it is purely
18 a circumstance where we have a person with a substance abuse
19 problem, having a camera present isn't presumed to be some
20 investigatory process. So we don't believe a camera should be
21 operated at that time.

22 We would hardly advocate that the council create a
23 process whereby civilians can provide oversight and can request
24 and review those videos. The recordings should be made
25 available to civilian and police oversight bodies, the

1 auditor's officers, commissioners, the IPR, the Citizens Review
2 Committee, PCCEP, and BHUAC.

3 Additional recordings should not be accessible
4 without court order to the Portland police officers who were at
5 the recorded event. The recording should be accessible to PPB
6 commanding officers for use in supervision and for training
7 department purposes for assistance in instruction. The
8 recording should be made available on request to defendants
9 directly, without cost, if charges are not filed or are
10 dropped. The recording should be made available on request to
11 attorneys for defendants if charges are filed.

12 The recordings should not be used by PPB or the City
13 in its documents or messages or promotion or improvement
14 materials. The recordings should not be shared publicly online
15 by PPB or individual officers.

16 The recordings should be kept for at least two years,
17 and all persons appearing in the recording should be shared
18 with defendants or their attorney introduced as evidence in
19 trial, used in police training, reviewed by citizen oversight
20 committees or by -- city employees should be advised prior to
21 the release.

22 One last thing before I turn matters over to
23 Ms. Freidman. We would also highlight again, as we have at the
24 prior hearing, that we do not believe that the City is in
25 compliance or substantial compliance with paragraphs 88 and 89

1 of Section 5 of the settlement agreement, particularly the
2 drop-off and walk-in center and support for creating --

3 THE COURT: So what would be needed to come into
4 compliance with those paragraphs in the opinion of the MHA?

5 MR. CHAVEZ: Certainly. We believe that an effective
6 drop-off and walk-in center would be designed to provide a
7 client-centered trauma care that is based on the urgent or
8 emergent concerns identified at the time of arrival to such
9 location. There should be resources for follow-up care and
10 support in the community, including geographic proximity to a
11 mental health officer or other services that might immediately
12 meet the clients' needs.

13 Peer support would be important. Individuals with
14 mental health and/or substance abuse disorder, persons with
15 living experiences or trained to provide engagement and
16 assistance as well as access to mental health and substance
17 abuse providers for matters of greater acuity in an emergency.

18 Additionally, culturally relevant and specific
19 support and resources reflected with those that utilize the
20 services, they would provide opportunities to address basic
21 living needs at the time of the visit, including such services
22 such as restrooms, showers, laundry, food, places that charge
23 their phones.

24 We would hope that these facilities would divert
25 people from emergency departments and jails and corrections

1 facilities and that there would be support for police drop-off
2 and individual or referred walk-in methods for arrival and
3 access -- fundamental access. They need to have a mental
4 health and a general health program that would allow people to
5 actually access them without cost or reduced cost.

6 So those are the factors that we're looking at, and
7 those are not being met currently with -- well, like the
8 Unity Center. We are heartened that Multnomah County has made
9 a significant investment in developing a facility that could
10 meet a few of these needs, but we do not see the City's
11 involvement as significant in that requirement, and we would
12 ask that we could check that off our list.

13 THE COURT: Thank you, Mr. Chavez.

14 Ms. Freidman, welcome.

15 MS. FREIDMAN: Thank you. I'm Jan Freidman. I am
16 with the Mental Health Alliance. I work at Disability Rights
17 of Oregon. I'm here to talk about the same thing that
18 everybody else is here to talk about, which is the importance
19 of community engagement, communication, and trust building,
20 including with the Behavioral Health Unit Advisory Committee,
21 which, as you know, is specifically a unit that was a creation
22 of the settlement agreement to help people with mental health
23 issues in our community and the police in their interaction and
24 communication.

25 So I'm just going to read a quote from the National

1 Council on Disabilities recommendations from Privileges to
2 Rights. This was almost 20 years ago, but it is still true
3 today.

4 "People labeled with mental health disabilities
5 should have a major role in the direction and control of
6 programs and services designed for their psychiatric
7 disabilities themselves and should not be confused with the
8 roles that family members, professional advocates, and others
9 often play when consumer input is sought."

10 This also is a similar underpinning of the peer
11 recovery programs. So, as you know, the importance of
12 community engagement is emphasized all over the settlement
13 agreement. Throughout it, it talks about trust between the
14 community and the Portland Police Bureau and the importance of
15 gaining that kind of confidence.

16 There is a quote that has to do with setting up the
17 COAB; that there's a significant community and city interest in
18 improving Portland Police Bureau's community relationships.
19 "The community is a critical resource in redefining and
20 restructuring the existing community input mechanisms to
21 provide for independent oversight of the agreement while also
22 enhancing Portland Police Bureau's current community outreach
23 efforts will promote community confidence in Portland Police
24 Bureau and facilitate police-community relations necessary to
25 promote public safety."

1 So the reason I bring this up is the Behavioral
2 Health Unit Advisory Committee is a governing body under the
3 Oregon public community laws, and they are giving
4 recommendations and thoughts and information to Portland Police
5 Bureau, as well as BHUAC, which are both public bodies, and
6 they need to gather information and make recommendations, and a
7 forum is used to make decisions.

8 As stated in our Mental Health Alliance's letter to
9 the Mayor dated February 1st of this year, BHUAC comes under
10 the Portland meeting laws. Even if it were a close call, the
11 public community laws themselves say that if it is close,
12 construe it in favor of openness. We've requested that the
13 BHUAC be under the meeting laws. The City Attorney, who is
14 here, has responded, also in February, saying, well, they can
15 decide if they feel that's appropriate, and also that they're
16 not officially under the Oregon public meetings laws for a
17 variety of reasons, which we believe are not accurate.

18 Basically, the way the BHUAC works, there is a BHUAC
19 lieutenant. There is also a BOEC representative. They set up
20 the meeting. They get the recommendations. They get the
21 information. They forward those on to the BOEC. It gets
22 forwarded on further in Portland Police Bureau. It gets
23 forwarded on to the compliance people, and it is done by forum.

24 So it really comes under the public meeting laws.
25 It's certainly within the spirit of the settlement agreement.

1 We very much appreciate you that, during all of these hearings,
2 you have welcomed and made accessible and been gracious to all
3 comers -- the public -- and that is key for there to be the
4 sort of healing and empowerment of everybody in our community.
5 It can't be an "us" and "them." Well, we at the BHUAC
6 represent all these people. Everybody needs to be able to
7 come, if they want to -- many people don't want to -- and have
8 a voice and at least have the doors opened and allow there to
9 be public input.

10 So that's something we feel that is important and is
11 really key on community engagement, especially for this unit
12 that has three functioning aspects that are allowing people
13 with mental health issues to be served better by the police. I
14 mean, this is something that would help engender trust if
15 people actually knew about it. But they should also not find
16 out about it after the fact, but actually have some input.
17 "You know, I think it would work better if you did it this
18 way."

19 It seems like sometimes, with having the public come,
20 there is this fear that it is just going to make everything
21 worse; but, no, you could have someone come who is going to
22 come up with ideas, like they did today, that nobody would say.
23 And they're important. They're making us think, and they're
24 making us improve our city and improve our relations.

25 So on behalf of the Mental Health Alliance, I request

1 that you consider taking whatever action you feel appropriate
2 in terms of allowing BHUAC to feel comfortable in opening their
3 doors and allowing people to see what they are doing and have
4 input and see what's happening.

5 THE COURT: Thank you, Ms. Freidman.

6 Any comments or responses from the United States,
7 from AMA, PPA, or the City on that specific issue?

8 MR. HAGER: Your Honor, we have not required the
9 meeting be public and have deferred to the self-determination
10 of the committee. We don't take a position on whether it is
11 subject to Oregon public meetings law. I think that would be
12 up for the state courts to decide.

13 THE COURT: On the merits or the suggestion, not the
14 legality of it, you're saying that you're leaving that to the
15 self-determination?

16 MR. HAGER: Yeah. Earlier this year Jason Renaud
17 gave a presentation to the Behavioral Health Unit Advisory
18 Committee urging them to vote in favor of opening their
19 meeting. That had been scheduled. They hadn't had their
20 quorum. I understand they are going to be taking that vote up,
21 but from the United States' perspective it is up to the
22 committee.

23 THE COURT: Thank you. Does anyone else want to be
24 heard on that issue at this time?

25 MS. REEVE: Your Honor, from the City's perspective,

1 we don't believe that there is a requirement under the public
2 meetings law that the meetings be open. I have provided that
3 written analysis to the BHUAC and the Mental Health Alliance
4 and also came and briefed them at the meeting. We also agreed
5 and understand that the Police Bureau has taken the position
6 that the BHUAC itself should make the determination about how
7 it can function best.

8 THE COURT: Am I correct in concluding that the City,
9 though, does not believe that if the unit wishes to open its
10 meetings, all of its meetings or some of its meetings, there
11 would be anything legally that would preclude that? Am I
12 correct?

13 MS. REEVE: Correct.

14 THE COURT: Anyone else?

15 MS. ALBIES: The AMAC, as most people can probably
16 guess, believe in transparency and accountability, and so we
17 would support opening up those meetings regardless of the legal
18 position.

19 THE COURT: When you say "regardless of the legal
20 position," I think we have a consensus, a complete agreement,
21 there's no legal prohibition for them opening it up. Whether
22 or not there is a legal requirement is not before me, nor as I
23 think is my place to opine upon, at least not without briefing,
24 argument, and jurisdiction.

25 But everybody seems to agree that there is no legal

1 prohibition. We have heard some arguments in terms of why it
2 would be helpful and a transparency if at least some of the
3 meetings were opened up.

4 As I hear from Mr. Hager, a final decision has not
5 yet been made by a self-determining body on that question?

6 MR. HAGER: That's correct.

7 THE COURT: The remaining items on my agenda are to
8 hear compliance assessment overall from the PCCEP, from the
9 Portland Police Association, and then finally from the City.
10 Would you all like one final ten-minute recess?

11 THE COURT REPORTER: I would, Judge.

12 THE COURT: That's a good answer. Some votes count
13 more than others. (Laughter.)

14 Ten-minute recess.

15 (Recess.)

16 (Open court; proceedings resumed:)

17 THE COURT: All right. Good afternoon.

18 At this time I invite comments from the PCCEP
19 regarding compliance assessment.

20 Welcome back.

21 MR. DRURY: It's good to be up here again,
22 Your Honor. I am going to keep my remarks brief. I feel a lot
23 of the groups have already had a lot to do with this. I am
24 just going to speak on my behalf. Some of our other members
25 are here. They would articulate some of this, but I don't want

1 to speak for all of them.

2 As far as the issue of compliance is concerned with
3 the settlement, I find the words "substantial compliance" to be
4 very difficult, given the state of police-community relations
5 in our city right now. That being said, I think PPB will
6 fulfill its compliance requirements.

7 So what I've always kept in mind and talked to our
8 fellow committee members and the officers that have come to
9 present before us with regard to compliance, compliance does
10 not equal community trust or community trust in the institution
11 of policing. I think there's still a substantial way to go
12 before that's there. So when we talk about compliance, I'm
13 looking at the larger goal that goes beyond the settlement, and
14 the settlement certainly works, specifically with persons with
15 mental health issues.

16 I look at the broader scope of people of color,
17 houseless people, and I think there's a substantial amount of
18 work to be done, particularly training improvement, how we
19 respond to certain calls, policy transformation.

20 There are many areas that I've mentioned, like
21 houseless persons. A recent report is that over half of the
22 calls are to houseless people, persons obviously with mental
23 health issues, people of color. When I'm out teaching, I talk
24 to my students, students of color, and where they are at with
25 the police. There's a huge gap.

1 We are doing a research project with the Multnomah
2 Youth Commission right now, another organization I work with.
3 We have been talking with a lot of youth about their views on
4 policing, and there is a substantial gap in the latino
5 community, especially with regards to immigration and obviously
6 a person's mental health problems.

7 So I'm looking at more of like a community compliance
8 initiative, I think, is what we need. Like I mentioned
9 earlier, I will go back to our subcommittee, and those are the
10 groups that are really going to have to push to see engagement.
11 So when we talk about engaging the community and seeing them at
12 our meetings, it is not like a group of people that are out
13 there waiting to be invited. That's a group that you have to
14 earn their trust, and it goes even beyond the institution of
15 policing. It is an education. It is in every layer of our
16 city that we are failing to engage and properly interact with
17 those groups.

18 So that is all I have to say as far as the
19 compliance. I think there is a lot to be done. It is up to us
20 to go out there and get to work.

21 THE COURT: Thank you. It sounds like it is in good
22 hands.

23 MR. DRURY: Thank you, Your Honor.

24 MS. REEVE: Your Honor, if I could. At this time
25 Judith Mowry, who is the PCCEP interim program manager, would

1 like to speak. I don't know if you would like her to speak now
2 during the remainder of the PCCEP time.

3 THE COURT: What's your recommendation?

4 MS. REEVE: Either now or during part of the City's
5 time.

6 THE COURT: I defer to your recommendation.

7 MS. REEVE: Let's have her speak now since we are
8 talking PCCEP.

9 Thank you.

10 THE COURT: Thank you.

11 Mary, could you get the hand-held microphone. It
12 might be easier if you stay on that side of counsel table.

13 Thank you.

14 State your full name, please.

15 MS. MOWRY: My name is Judith Mowry. My day job is
16 that I am a senior policy advisor in the Office of Equity and
17 Human Rights. I was the supervisor of the last project manager
18 for PCCEP. When she had to leave unexpectedly, I was asked to
19 step in and try to fill the void and go.

20 I really want to thank everyone in the room. This is
21 such an important issue. I wanted you to know my background is
22 I have done a lot. I was a mediator, a facilitator. I have
23 done a lot of complex multiparty policy development, community
24 meetings.

25 And when you want to really include people from

1 different walks of life, who come from different life
2 experiences, what that looks like might not look like what you
3 might put out in a dominate cultured court order for how a
4 meeting would go. I just wanted to share -- first, I wanted to
5 assure everybody we are checking references for the finalists
6 for the project director. That's in play. We are arranging
7 the orientation for the new alternates and anyone who has
8 missed it otherwise.

9 But one of my observations is there is so many
10 tensions here that we are trying to hold. The tension of
11 independence for this committee and at the same time giving
12 enough guidance and enough support that they can function.

13 The thing with location. It was very important to
14 the steering committee and the members that the meetings be all
15 over town so there's accessible places around town for the
16 meetings. Well, the downside of that is there is not perfect
17 locations for every public meeting in every neighborhood, and
18 we don't have -- sometimes it is hard to build up a following
19 for that.

20 Another thing that is, historically, this group --
21 and this goes back to the COAB -- has dealt with some very
22 challenging public comment time, to the point of sometimes
23 being disruptive, clearly being rude, sometimes being
24 frightening. So I do know that that's been difficult for
25 people, and I think I might be looking in on YouTube rather

1 than going into the room, if that was my choice, because it can
2 feel really overwhelming.

3 I think the way that particularly Lakayana and his
4 facilitation and the way the meetings have been handled has
5 just been masterful. It is not an easy situation. One of the
6 first people we lost from the PCCEP was someone with lived
7 experience. She had a social anxiety disorder, and it just
8 overwhelmed her completely. This is very public, very high
9 conflict. Nobody else but the City Council has to sit through
10 public involvement and just get slammed on, right, with nothing
11 else to do.

12 So I thought it was important to say that I think if
13 we want people who are coming from different walks of life, who
14 bring lived experience, we have to figure out that might look
15 different. I know we are kind of partway through a settlement
16 agreement.

17 I appreciate the oversight and the diligence of the
18 AMA and the mental health community and everybody who is
19 working so hard on this, but I did just also want you to know
20 that we feel -- I speak for Claudia, the other staff member,
21 and myself -- we are very conscientious about the integrity of
22 the group, the integrity of the experience, and, really, again,
23 wanting to support them.

24 They didn't want an outside facilitator. They wanted
25 to figure out how to do it for themselves. They made

1 tremendous strides in that. You know, sometimes we miss an
2 agenda item or public comment goes on very long or we don't
3 cover everything on an agenda. The folks at that table are
4 really interested in engaging with the community, and that's
5 what they really want.

6 And, again, the last thing I want to say is that
7 this -- particularly about helping the Police Bureau learn how
8 to engage with the community, there are so many expectations on
9 the PCCEP in terms of their own engagement and other tasks that
10 they're supposed to perform. It's just a huge amount to ask
11 any community volunteer to do.

12 And the last thing, it was written into the agreement
13 about having a community outreach person. I didn't know about
14 that until a little ways into things. There is already an
15 issue where people don't trust you because you work for the
16 City. That's a heartbreak for me sometimes, when people trust
17 my care about the community because of where I work. What
18 we've been thinking is would it make more sense to actually
19 have branding agreements with different community-based
20 organizations for them to do organizing in their communities;
21 to identify the issues they care about that are related to the
22 PCCEP; to bring members, to get people engaged. Because I
23 think that's actually more of a best practice if we really want
24 to start to empower communities to be a part of this community.

25 So that's some of what's been going on behind the

1 scenes, and I thought it was only fair to everyone in the room
2 to just have sort of an up-to-date update.

3 THE COURT: That makes sense, and I very much
4 appreciate your perspectives on this.

5 Thank you.

6 MS. MOWRY: Thank you so much.

7 THE COURT: I believe it is time for Mr. Karia and
8 the Portland Police Association.

9 MR. KARIA: Thank you, Your Honor.

10 I don't have any particular comments on any specific
11 issue of compliance related to a settlement agreement term, but
12 I did notice an important pattern, I think one that is
13 highlighted for the Court, if the Court has not picked up on
14 it, after listening to the United States and the COCL and
15 reading their status reports.

16 The pattern I picked up on, Your Honor, is that even
17 with final approval by this Court of incredibly important
18 settlement agreement terms, terms that deal with things of
19 high-public interest, such as training, use of force,
20 accountability, to name a few, at least three things have
21 resulted:

22 One is the City has shown and its officers have shown
23 commitment to reaching substantial compliance. The City and
24 its officers have, in fact, reached substantial compliance on a
25 whole number of measurements set forth in the settlement

1 agreement, and the parties have actively come before this Court
2 and briefed this Court in public settings to provide some
3 light, if you will, on the work of the Police Bureau and its
4 officers on a day-to-day basis.

5 With respect to the core issue that's before this
6 Court as it relates to PCCEP and final approval of those PCCEP
7 amendments, I think it's worth highlighting, once again, that
8 final approval does not stop monitoring by the United States or
9 the COCL. It does not stop the City's active work towards
10 substantial compliance, and it does not stop the PCCEP from
11 doing its incredibly important work.

12 This Court's approval of those PCCEP settlement
13 agreement terms does provide for a stable footing for reaching
14 substantial compliance, which is the parties' ultimate goal
15 with respect to the settlement agreement.

16 Thank you, sir.

17 THE COURT: Thank you, Mr. Karia.

18 All right. Now it is time for further comments from
19 the City, either Ms. Reeve or Mr. Vannier, or both of you.

20 MS. REEVE: Thank you, Your Honor. I have some brief
21 comments on compliance. Then Mr. Vannier will have some final
22 comments on the issue of the renewed motion for approval of the
23 amendment.

24 I hope everyone will bear with me a bit. I kind of
25 ditched my prepared remarks because I felt they were going to

1 be too repetitive of what we have already heard.

2 So I want to start by acknowledging and this is, I
3 think, in keeping with the point that Mr. Drury just made --
4 the City and PPB both recognize that we have continued work to
5 do to improve an area of providing public safety services and
6 that the settlement agreement was never intended to address all
7 of those issues. Even when the City does achieve substantial
8 compliance with the many obligations in the settlement
9 agreement, much work in other areas will remain.

10 It's important to note, as many people have, that
11 after the Department of Justice investigation and as a result
12 of that investigation, the settlement agreement in its terms is
13 focused on mental health and largely not on other extremely
14 important issues, such as racial equity. That does not mean
15 that those other issues aren't just as important, but it does
16 mean that they are not the focus of the settlement agreement,
17 which is largely what we are here today to discuss.

18 With regard to mental health, and as Chief Outlaw
19 noted in her remarks, our society is changing. Over a period
20 of many years, the good news is we've shifted from
21 over-institutionalization of people with mental health
22 conditions to a philosophy of community-based mental health
23 services. The downside, of course, as we all know, is that the
24 resources have not been there to provide community-based mental
25 health services to the extent that they are required. And

1 we've heard much from the MHA today about that.

2 As a result, police officers have been put in the
3 position of often being first responders to mental health
4 crises. I know I'm covering old ground, but the City of
5 Portland and the Police Bureau have worked many years, frankly
6 since well before the Department of Justice's investigation, to
7 try to improve how the City provides public safety services to
8 people experiencing mental illness or a mental health crisis.

9 And as I have noted, that's been the primary focus of
10 the settlement agreement, and tremendous progress in that area
11 has been made. Every single PPB officer now receives 40 hours
12 of crisis intervention training. Every Bureau of Emergency
13 Communications call taker and dispatcher now receives crisis
14 intervention training. A large subset of Portland Police
15 Bureau officers volunteer as members of the Enhanced Crisis
16 Intervention Team and receive another 40 hours of crisis
17 intervention training.

18 As we've heard today, the City has the Behavioral
19 Health Unit and the Behavioral Health Unit Advisory Council and
20 the Behavior Health Unit response teams that try to ensure that
21 the Bureau continues to refine and grow and better serve people
22 with mental health needs.

23 The City is also providing services in other ways,
24 including the service coordination team, and I would just note
25 again, along with there not being enough community-based mental

1 health services, there is also not enough addiction and
2 recovery services for folks.

3 As we heard from Commissioner Hardesty this morning,
4 the City Council is considering a new pilot project for Project
5 Street Respond, which will be another effort to reduce the
6 times when a PPB officer, rather than another more appropriate
7 responder, is dispatched to folks in a mental health crisis.

8 All of these programs have had and hopefully will
9 continue to have beneficial impacts. None of them is a silver
10 bullet. Honestly, the City, the Portland Police Bureau, the
11 City Council, all of us would love to get to zero uses of
12 force -- serious force against people experiencing a mental
13 health crisis. That may not be necessarily possible to get to
14 zero, and it is not the goal or requirement of the settlement
15 agreement.

16 What is a reasonable expectation and what is a
17 requirement of the settlement agreement is that PPB delivers
18 police services to the people of Portland in a manner that
19 effectively supports officer and public safety and that
20 complies with the constitutional laws of the United States.
21 That's the goal of the settlement agreement. That's what we
22 are working towards -- substantial compliance.

23 I'm going to even abbreviate my abbreviated remarks a
24 little bit in some of these areas. The settlement agreement
25 recognized, at the time we entered into it and negotiated it,

1 which was several years before it was finally entered, as we
2 know, that there has been an accelerating movement toward a
3 model police management that relies on existing and developing
4 management tools, data, auditing, what I know the compliance
5 officer team calls being a learning organization.

6 Much of the most important work that has been done is
7 to enshrine those systems within the Portland Police Bureau,
8 and some of those systems allow PPB to use data to evaluate its
9 development and compliance of policies, uses of force, its
10 training needs and outcomes, and data on its interaction with
11 people in mental illness.

12 PPB has been extremely fortunate for the last --
13 Chief Outlaw has been here for the last 18 months. She was
14 closely involved in similar systemic reforms in Oakland. She
15 believes in them. She is familiar with them, and they are a
16 key focus of her leadership team.

17 PPM now has a comprehensive audit system in place.
18 We have heard a lot about that. It enables it to audit its own
19 uses of force, to have a lot of data about its own use of
20 force, and, in particular, its use of force in connection with
21 people where there's a mental health component.

22 To some extent, it's hard to compare our current data
23 with prior data because we didn't previously have the systems
24 in place to track it as effectively as we do now -- outcomes
25 and what interactions are necessarily interactions with people

1 experiencing a mental health crisis or having mental health
2 illness.

3 But we can do that now and we can see -- and it has
4 been alluded to here today -- that the vast majority for 2018,
5 over 99.3 percent, over 26,000 interactions in 2018, involved
6 no use of force. I don't want to lose sight of that because,
7 of course, there are some interactions that we have talked
8 about today, when you have an officer-involved shooting and
9 someone loses their life, that is tremendously impactful, and
10 it should be, and there should be very extensive review of
11 that, and there is.

12 But 99.7 percent of the time when Portland police
13 officers have a call that involves some mental illness or
14 mental health crisis component, 99.3 percent of the time no
15 force at all is used. When force is used, 65 percent of the
16 time -- approximately -- it's the lowest category. Two of
17 those components are resistance against handcuffing, meaning
18 the officers have to use some level of force to apply
19 handcuffs, or to patrol against resistance, where the officer
20 is trying to physically control a subject and has to use some
21 level of force to control their movement.

22 So the percentage of calls where anything other than
23 extremely minimal uses of force are used is very, very small.
24 I didn't do well in math. I tried to quickly do the
25 percentage, but it was so small, and I couldn't be sure if I

1 was doing it correctly, but it is very small.

2 We talked about some of the other systems, and I'm
3 not going to go over those, other than to say that, as I
4 mentioned, Chief Outlaw is extremely committed to not only
5 utilizing the systems, but continuing them beyond the life of
6 the settlement agreement, ensuring their independence, and I
7 know that she is going to be -- and she told me that I could
8 say this -- she is going to be announcing organizational
9 changes to further strengthen the independence of some of the
10 auditing and review functions in the very near future.

11 I would like to briefly address some issues that have
12 been raised earlier today. I mentioned the number of uses of
13 force. I want to point out -- there's, I'm sure, an
14 inadvertent error in the Mental Health Association's
15 submission. In an exhibit to its submission, the Mental Health
16 Association says that in 2018 five people were killed in
17 officer-involved shootings. In fact, there were three such
18 deaths in 2018. To date, in 2019, there have been two deaths
19 from officer-involved shootings

20 Of the five officer-involved shootings since
21 January 1, 2018, every subject was armed with either a firearm,
22 a realistic replica of a firearm, or a knife. The majority of
23 those officer-involved shootings were in defense of others and
24 not just a threat to the officers themselves.

25 Finally, I do want to mention the League of Women

1 Voters had some very good feedback, and we appreciate their
2 wonderful organization that is reviewing and engaged in
3 monitoring much of this. They did note in their submission
4 that PCCEP has reviewed PPB's 2017 annual plan and made five
5 recommendations, and they were asking what had occurred with
6 those. All five of the recommendations that were forwarded to
7 Chief Outlaw from the PCCEP, with regard to the annual report,
8 were approved by the chief.

9 The first was that the draft of the 2018 annual
10 report be prepared no later than June 2019 to allow PCCEP to
11 review and comment in time for PPB no later than September
12 2019. That report has been prepared and is being finalized.
13 It is in the final draft. It is currently being edited and
14 will be provided to PCCEP before its June meeting later this
15 month.

16 The precinct meetings, because, as we all know, COAB
17 was not functioning for a period of time, and so there was no
18 community engagement body to review the 2017 report until PCCEP
19 was seated. So PCCEP did review that, but we didn't have
20 separate precinct meetings because it was getting compressed
21 with the 2018 meetings. So precinct meetings will be scheduled
22 in the near future. Both of those annual reports will be
23 reviewed, and then we will get back to the one annual review.

24 Notice of those meetings will be pushed for a variety
25 of meetings that include PPB's website, the City's website,

1 including Twitter, Facebook, Instagram, all of the existing
2 advisory councils, and each precinct also has its own network
3 of city and advisory councils that will put that information
4 out. PCCEP will post it on their website and push it out to
5 their network.

6 In closing, I just want to note that the City and the
7 Portland Police Bureau have made systematic reforms that will
8 enable the Portland Police Bureau to audit its own performance
9 and to gather data and make data and to inform decisions and
10 corrections as it goes forward. These systems have resulted in
11 both improvements, to date, in reductions in uses of force and
12 improved training, but perhaps equally importantly, they enable
13 PPB to monitor its own performance and determine where
14 improvement is needed and make that improvement and to truly
15 become learning organizations. Those systems will be extremely
16 useful beyond the life of the settlement agreement, and they
17 will be extremely useful as PPB is able to devote more focus to
18 other system issues, including continued progress on racial
19 equity.

20 Thank you very much

21 THE COURT: Thank you, Ms. Reeve. I appreciate those
22 comments very much.

23 Mr. Vannier.

24 MR. VANNIER: Thank you, Your Honor.

25 So I'm here to just hopefully wrap things up a little

1 bit and just offer some brief argument on the parties' joint
2 renewed motion to enter the settlement.

3 Now, as Your Honor heard today, the PCCEP is a
4 functioning body and has been operating as such for slightly
5 over six months at this point. As a matter of law, the parties
6 have met the legal requirements for entry of the full amended
7 settlement agreement at this time.

8 THE COURT: And those legal requirements are what?

9 MR. VANNIER: The legal requirements are those
10 provided by -- so it was paragraph -- I believe it is 194 of
11 the original settlement agreement and now paragraph 184 of the
12 amended settlement agreement. That process is essentially that
13 those amendments were formulated with the United States. They
14 are submitted to this Court by stipulation of the parties, and
15 they become effective, I believe it states after 45 days,
16 absent further action by the Court. Our position is that under
17 the circumstances of this case, it is not a discretionary
18 matter; that the legal standard for the entry of the amendments
19 have been made.

20 Now, I do want to also add that even if it were a
21 discretionary matter, on this record, declining to enter the
22 PCCEP amendments, I believe, on this record, would be an abuse
23 of discretion, and I'll explain why.

24 On this record, there is nothing that suggests that
25 the PCCEP amendments are not fair, adequate, and reasonable.

1 You have heard concerns about the implementation of the PCCEP
2 amendments. However, you have heard no concerns about the
3 underlying structure, and that is something that is important
4 to emphasize. Concerns about implementation do not provide a
5 valid legal basis for declining to adopt -- to accept -- I'm
6 sorry -- the parties' stipulated amendment. Again, approving
7 the amendments is just part of the journey. The parties and
8 the City will be reporting to this Court. The DOJ will be
9 monitoring the City's compliance. However, at this time the
10 parties especially need clarity. The City does need to know
11 what it is being legally required to comply with and the U.S.
12 DOJ needs to know what it is monitoring.

13 So for those reasons, Your Honor, we would urge this
14 Court to accept the joint motion to enter the stipulated
15 agreement at this time.

16 THE COURT: Thank you, Mr. Vannier.

17 Anything further from anyone else?

18 All right. Let me state that --

19 MR. GEISLER: Your Honor --

20 THE COURT: Yes. Mr. Geissler.

21 MR. GEISLER: One suggestion. If Your Honor would
22 be inclined to grant final approval today of the PCCEP
23 amendments, we would be amenable to showing up in three months
24 or six months to report back on the status of further
25 implementation. I don't want to give the impression to either

1 the Court or the audience that there is a capacity involved
2 here. This is an open process, as transparent as the AMAC
3 rightfully seeks. If we could have finality to know what we
4 should monitor, we would still report back to the Court.

5 Thank you.

6 THE COURT: I understand. I also understand
7 Mr. Vannier's position to be not inconsistent with what you
8 just said as well.

9 To the extent that anyone here or the City is arguing
10 that there is no discretionary action needed by the Court, I
11 disagree. But if you are right, well, then there is an
12 appellate process to correct that. But I don't agree.

13 I think that, ultimately, here the question is: Are
14 the PCCEP amendments, which is the only part that has been
15 conditionally approved and that remains, are they fair,
16 reasonable, and adequate? I have already found that other
17 portions of the amendment are fair, reasonable, and adequate.

18 Now, let me take a step back. Looking at the
19 settlement agreement as a whole -- and by the way, before we
20 get into that detail, I do want to say that when the settlement
21 agreement was first presented in the latter part of 2012 and in
22 the six-plus years that we all have been living with it, I have
23 seen substantial progress. I'm not going to use the words
24 "substantial compliance," but you have used the words
25 "substantial compliance," and I agree there is substantial

1 compliance on many, many aspects. But I am trying to keep the
2 legalisms out of it for now.

3 I've seen tremendous progress. I think overall it
4 has been very, very good for the City. I have seen good faith
5 performance by all of the parties involved. We now have a new
6 chief, who also embraces the values and spirit as well as the
7 letter of the settlement agreement. I think that this is
8 really, really good for the City.

9 And so I commend everyone involved in this process.
10 You have the respect of the Court, all of you, and this
11 includes the United States, the City, Portland Police
12 Association, the AMA, the MHA, and everyone else who is
13 involved in this, the COCL, the folks that were involved in the
14 previous COAB process, and the folks currently involved in the
15 PCCEP process. You are all doing a tremendous benefit for the
16 City and for the people that live in the city, and so I commend
17 you for that.

18 All right. So don't misunderstand anything I'm about
19 to say when we looked at the entire settlement agreement and
20 its structure, there were two things about it that strike me as
21 very significant procedurally. No. 1 is that it didn't
22 envision that the United States would be supervising the City
23 and the City police forever. The plan was that, once
24 substantial compliance has been achieved and maintained for 12
25 months, then, upon motion of the parties, the case will be

1 fully dismissed. And I think that's a very good way to
2 approach it. I notice something very interesting, though, in
3 that. It is not the case that once substantial compliance has
4 been received a motion will be received and then if the Court
5 agrees that there is substantial compliance the case will be
6 dismissed. There has to be an achievement of substantial
7 compliance followed by one year of showing, yeah, we're going
8 to continue with substantial compliance, and that was very
9 wise, and that's something that informs my analysis of the
10 structure and wisdom of the settlement.

11 A second procedural aspect of this settlement, which
12 we talked about at our very first hearing on whether or not the
13 settlement was fair, reasonable, and adequate, and there was
14 some divergence of opinion, and so I heard some opinions from
15 the public who offered some views along these lines, was that
16 there was no ongoing Court supervision.

17 You know, this was not the first of this type of
18 lawsuit filed by the United States Department of Justice around
19 the country, but it was the first to not have a court monitor
20 or a consent decree. It was a settlement agreement.

21 Am I right on that?

22 MR. GEISLER: Your Honor, the Warren, Ohio,
23 agreement is phrased as a settlement agreement, and the
24 United States is the only monitor.

25 THE COURT: Was that before this agreement?

1 MR. GEISSLER: It was before this agreement, and
2 there has not been ongoing Court oversight.

3 THE COURT: Okay. But the ones, at least the ones I
4 looked at -- Washington, Los Angeles, St. Louis, and a few of
5 the others -- they had court monitors that reported to the
6 Court and continuing Court oversight. And when we had our
7 fairness hearing, one of the criticisms, one of the arguments
8 we heard from some people is that I should not approve this
9 settlement agreement as fair, reasonable, and adequate because
10 it didn't have continuing Court oversight; only oversight by
11 the United States.

12 Notwithstanding those arguments, which were well
13 articulated, I accepted the arguments by the United States and
14 the City and others, and I approved the settlement as fair,
15 reasonable, and adequate, even though it didn't have continuing
16 Court oversight. Was that a mistake in hindsight? I'll leave
17 academics and others to opine upon that in the future. It is
18 not for me to opine upon right now, and I may be a little too
19 close to it, in any event.

20 But upon approving the settlement agreement as fair,
21 reasonable, and adequate, it very rapidly became clear that a
22 significant portion of it or piece of it was not adequate.
23 There was substantial compliance achieved in many areas, and I
24 think that was very good. But the community engagement aspect
25 of it, which I thought was a critically important part, it

1 wasn't maybe -- it is certainly not the only part, and it may
2 not even be the most important part, but it was an important
3 piece, it fell apart.

4 And as everybody conceded, the United States and the
5 City and everyone else, there was non-compliance with the COAB
6 aspect, Article 9 of the settlement agreement, and that lasted
7 for several years. There was several years of inaction, and
8 that was a problem.

9 So at least in hindsight that portion of the
10 settlement agreement dealing with community involvement and
11 engagement was not adequate. It just wasn't sufficient to
12 address the problems that needed to be addressed.

13 So after a little bit of delay, a little bit of other
14 activity, the parties came together -- the United States, the
15 City, with the assistance of PPA and the AMA -- and they came
16 together with a proposed amendment.

17 The amendment dealt with a number of other issues,
18 and, as you know, I have already approved those other issues.
19 Those are good changes. And the amendment proposed totally
20 revamping the community involvement and engagement portion,
21 completely eliminating the COAB structure, creating the PCCEP
22 structure, and they presented that to me for my approval as
23 fair, reasonable, and adequate.

24 It was presented to me before it had actually been
25 formed. I think the members of the PCCEP had only been

1 appointed a matter of days or a week or two before we had this
2 hearing. They hadn't even yet had their first official
3 meeting. They had a little bit of training, but they hadn't
4 even had their first official meeting. And people wanted me to
5 approve that.

6 The City moved that I approve it as fair, reasonable,
7 and adequate, and I said I couldn't do that at that time. I
8 wasn't disapproving it. It looked like it had a lot of promise
9 and potential. Frankly, it still does. And I'm even more
10 impressed now with the direction that the PCCEP solution is
11 heading than I was back when we knew nothing at all about it
12 last October.

13 I really am very impressed with the dedication of the
14 people involved in the PCCEP process, the way it seems to be
15 coming together. I am very impressed with its promise and its
16 potential.

17 As I ask myself, as I have to, is it adequate, I also
18 think I must learn from history. I thought the COAB process
19 was adequate. That's why I approved it originally. I've now
20 learned from hindsight that the COAB structure that was
21 proposed wasn't adequate.

22 So now I'm a little bit more skeptical about giving
23 approval until I have further confidence that something is
24 adequate. As a matter of fact, even this morning, when we
25 heard from Mr. Vannier on behalf of the City, and he

1 acknowledged -- and I appreciate your candor to the Court --
2 the City is not in full compliance. I appreciate your candor.
3 We are not in full compliance with the PCCEP process. There
4 are a number of things to be done. Hopefully, some will be
5 done in the very near future in terms of hiring a project
6 director and manager. There is progress that still needs to be
7 made before this portion of the settlement agreement or the
8 amended agreement is in substantial compliance.

9 So one of the things that I was struggling with when
10 we met in October, one of the questions put to me is what do I
11 need to see? Well, the answer is -- and now I'm basing my
12 lesson on the overall structure of the settlement agreement.
13 The structure of the settlement agreement is very wise. It
14 says that before this case is going to be dismissed, I must see
15 not only substantial compliance, but I must see it for a
16 reasonable enough period of time to know that it is working.
17 And now that's my answer to your question what must I see to be
18 satisfied that this aspect of the proposed amendment is fair,
19 reasonable, and adequate, especially the "adequate" piece of
20 that.

21 So I want to see that the PCCEP structure is in
22 substantial compliance. I want to see that it has been in
23 substantial compliance for an appropriate amount of time. I
24 don't know whether that's a full year or not. We have heard
25 some comments about six months. By the way, I'll share with

1 you right now, so you can start looking at your calendars, my
2 trial calendar at the end of this year is really busy, and so
3 let me give the following dates to you all, and you can check
4 your calendars. I will give you time and we will talk later.

5 The week of February 18th, Tuesday, February 18th --
6 Mary, will you double-check this too to make sure that these
7 days I'm giving we would be available for a full day, if need
8 be? That week of February 18th -- Tuesday, the 18th; Tuesday,
9 19th; Thursday, the 20th; Friday, the 21st. I think I can give
10 you any one of those days for a full day. The following week:
11 Monday, February 24th. And then possibly on possibly Monday or
12 Tuesday, March 2nd or March 3rd. I think I can give you full
13 days on all those, subject to Mary checking.

14 I'm thinking that I want to see full compliance --
15 maybe full compliance -- and the advice I've heard is
16 approximately six months. That gives us maybe two months or
17 so, 60 to 90 days, to achieve full compliance with PCCEP, and
18 then let's have that run for six months. Then you can report
19 back to me when we meet, maybe at the end of February or early
20 March, that there has been full compliance.

21 Now, that said, I did have one concern going into
22 this hearing, but this concern has been answered from your
23 answers during this hearing. I wanted to make sure that not
24 having final approval of this amendment wasn't interfering with
25 achieving substantial compliance of this PCCEP portion of the

1 proposed amendment, and I'm satisfied, based upon what I heard
2 today, that not having final approval is not interfering with
3 achieving substantial compliance. I heard the argument from a
4 few others, including Mr. Karia who just recently said that
5 approval will provide substantial footing. You know, I don't
6 really know what that means, but I know that the inverse of
7 that is -- that the lack of final approval is not interfering
8 with providing substantial footing. I've not heard any
9 specific information today that tells me the lack of approval
10 is in any way interfering with achieving stability or stable
11 footing.

12 You've heard me say I have a lot of hope and promise,
13 as all of you do, for the PCCEP approach here. I am not going
14 today to disapprove it. I think it's going in the right
15 direction. I commend you all for that. But I've learned my
16 lesson from the COAB in the original hearing. I'm not ready to
17 conclude that it's adequate until I see that it is in
18 substantial compliance and has been in substantial compliance
19 for some period of time. I'm just following the basic
20 framework of this agreement.

21 So for that reason, I am continuing my conditional
22 approval. I am continuing to express optimism and support for
23 the PCCEP process. I have already asked the co-chairs of PCCEP
24 to tell the members of PCCEP and subcommittees my appreciation
25 and commendation for the hard work they're doing. I think it

1 is probably the case that PCCEP will succeed where COAB did
2 not.

3 But before you get a final sign-off by the Court that
4 something is fair, reasonable, and adequate, especially
5 adequate -- it seems fair, it seems reasonable, but I can't
6 tell that it is adequate. And especially in light of the
7 history in this case, I'm not going to conclude that it's
8 adequate until I see a record of positive performance; namely,
9 some period of time, perhaps six months, of substantial
10 compliance. So that answers the pending questions.

11 I do give it continuing conditional approval. I am
12 at this time declining to give final approval; but, for the
13 reasons I've stated on the record, to get substantial
14 compliance and for an appropriate period of time, it is my
15 expectation that I will give it full and final approval, and I
16 do not believe that the lack of final approval at this time is
17 in any way interfering with achieving substantial compliance.

18 So that said --

19 MS. REEVE: Can I ask a clarifying question,
20 Your Honor? Do I understand correctly that the Court is
21 stating that the criteria for substantial compliance are the
22 criteria contained in the conditionally approved amendments and
23 the PCCEP plan appended to the settlement agreement?

24 THE COURT: No. I view the criteria as is the
25 agreement fair, reasonable, and adequate. That's what I view.

1 I think, as I discussed back when we had our original fairness
2 hearing, at that time I viewed the entire agreement as fair,
3 reasonable, and adequate. Since then, there has been
4 non-compliance with the COAB portion. We now have a proposal
5 to replace the COAB portion. As part of that proposal, I've
6 approved so many other pieces of it. The one other remaining
7 piece is to replace the COAB proposal with the PCCEP structure.
8 I am being asked is that fair, reasonable, and adequate. And
9 the answer is, as of right now, I can't tell.

10 MS. REEVE: And does Your Honor have any criteria
11 that Your Honor will be applying to make that determination?

12 THE COURT: I thought I said it. I thought I said
13 when I see substantial compliance for a sufficient period of
14 time, and right now it has been urged upon me that six months
15 of substantial compliance will be sufficient, then I will feel
16 more comfortable in concluding that it is adequate.

17 MS. REEVE: I'm sorry, Your Honor. I am probably
18 misstating my question, but that was my question. Is the
19 criteria whether we achieve substantial compliance with the
20 terms of the conditionally approved amendments to the
21 settlement agreement and the PCCEP appended to the settlement
22 agreement? That's what Your Honor is going to be judging
23 substantial compliance on?

24 THE COURT: Along with the basic structure of the
25 entire settlement. What I heard from counsel from the City

1 this morning is that we are not yet in substantial compliance
2 on the PCCEP issue. What I've heard from the friend of the
3 Court, amicus curiae, AMA, is "I think we're going in that
4 direction," but their advice is let's wait and see after we
5 have had about six months of compliance with the PCCEP program,
6 let's make sure it is working, before I can conclude it is
7 adequate. And that's my criteria. If you think that's legally
8 inappropriate, you know what to do, because you've done it
9 before.

10 MS. REEVE: No, Your Honor. I'm just trying to have
11 some clarity as we try to make sure that we are complying with
12 what the Court is looking for. So we will continue to work to
13 substantial compliance with the conditionally approved
14 amendments and with the conditionally approved plan.

15 THE COURT: Because they are conditionally approved,
16 there are absolutely no legal impediments at all for the City
17 to comply with all aspects of the proposed amendment. That's
18 what "conditional approval" means. They are conditionally
19 approved. Go forth and comply with them, I hope.

20 MS. REEVE: Thank you, Your Honor.

21 THE COURT: All right. So if those dates do not
22 work, then we can go back to the drawing board and look again.

23 Do any of those look workable?

24 MR. GEISLER: My only preference, Your Honor, is to
25 avoid a Monday or Friday, if possible.

1 THE COURT: So that would leave us with Tuesday,
2 February 18th; Wednesday, the 19th; or Thursday, the 20th.

3 Mary, are we free the 25th?

4 THE CLERK: Yes.

5 THE COURT: You could have Tuesday, the 25th, or
6 Tuesday, March 3.

7 Do all of those work, Mary?

8 THE CLERK: Yes.

9 THE COURT: All right. So Tuesday, Wednesday
10 Thursday, February 18, 19, 20; Tuesday, February 25; Tuesday,
11 March 3rd.

12 If any of those look particularly better for you all,
13 speak up. If any of them look problematic or inconvenient,
14 speak up, and I'll accommodate you.

15 MS. ALBIES: Your Honor, counsel for AMA, I have a
16 trial set for the week of the 17th, 18th, and 19th of February.
17 We prefer the 25th or March 3rd.

18 THE COURT: All right. How are we doing on the
19 25th or on March 3rd?

20 MS. REEVE: 25th works for us, Your Honor.

21 THE COURT: Does it work for the United States?

22 MR. GEISSLER: It does, Your Honor. Thank you.

23 THE COURT: All right. We will schedule our next
24 status conference and hearing on February 25th.

25 Is there anything further than any party would like

1 me to address in today's hearing?

2 MR. HAGER: Just one question. Is the joint motion
3 deferred or denied?

4 THE COURT: Deferred --

5 MR. HAGER: Thank you.

6 THE COURT: -- and continued, to be addressed again
7 on February 25th, 2020.

8 Do you all prefer 9:00 a.m. or 10:00 a.m. 9:00 a.m.
9 seems to work. Is that all right?

10 MR. GEISLER: It does, Your Honor. Thank you.

11 THE COURT: February 25th at 9:00 a.m. The pending
12 motion is deferred and will be addressed on February 25th,
13 2020, at 9:00 a.m. I do appreciate and commend everyone. I
14 think your written submissions, including from the public, have
15 been extremely helpful. I think our oral presentations today,
16 oral argument today from the parties and counsel and the public
17 have been very, very helpful. I appreciate everyone being
18 here.

19 We will be in recess until February 25th .

20 Thank you.

21 COUNSEL: Thank you.

22 (Court adjourned.)
23
24
25

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca
DENNIS W. APODACA, RDR, RMR, FCRR, CRR
Official Court Reporter

July 25, 2019
DATE

CHIEF OUTLAW: [1] 91/18
COMMISSIONER HARDESTY: [7] 83/1 83/3 87/18 88/5 89/20 90/21 91/8
COUNSEL: [1] 183/20
DR. BETHEL: [9] 28/12 28/15 30/25 35/4 35/17 35/22 38/24 129/25 137/22
DR. ROSENBAUM: [3] 115/4 125/7 139/7
MAYOR WHEELER: [1] 19/1
MR. CHAVEZ: [7] 40/10 40/12 40/15 140/9 140/12 142/12 144/4
MR. CHRISTOFF: [2] 139/9 140/5
MR. DRURY: [10] 45/18 45/20 45/22 46/1 49/6 49/11 49/17 53/4 151/20 153/22
MR. GEISSLER: [16] 5/9 94/7 94/15 95/3 103/5 103/13 103/21 136/7 137/3 169/18 169/20 172/21 172/25 181/23 182/21 183/9
MR. HAGER: [13] 5/12 9/9 12/23 17/10 17/18 17/21 18/4 114/7 149/7 149/15 151/5 183/1 183/4
MR. HANDELMA: [1] 54/19
MR. HANDELMAN: [3] 54/12 54/16 55/2
MR. KARIA: [3] 5/17 27/7 158/8
MR. PARKS: [1] 64/24
MR. RENAUD: [1] 42/4
MR. VANNIER: [13] 5/22 20/7 21/20 22/15 23/5 23/25 24/14 25/10 25/14 25/22 26/6 167/23 168/8
MS. AIONA: [4] 72/12 72/14 76/2 76/6
MS. ALBIES: [3] 129/22 150/14 182/14
MS. BRAYFIELD: [1] 68/9
MS. CHAMBERS: [7] 5/15 27/19 36/16 37/5 37/9 38/19 38/22
MS. DUMAS: [4] 45/23 51/19 51/21 53/2
MS. FREIDMAN: [1] 145/14
MS. GARY-SMITH: [2] 78/20 80/20
MS. HANNON: [1] 61/12
MS. MOWRY: [2] 154/14 158/5
MS. NEWELL: [1] 71/1
MS. PAYNE: [1] 114/10
MS. REEVE: [17] 5/19 18/15 18/21 20/5 103/23 149/24 150/12 153/23 154/3 154/6 159/19 179/18 180/9 180/16 181/9 181/19 182/19
MS. ZINGESER: [2] 76/11 78/16
THE CLERK: [4] 5/4 53/21 182/3 182/7
THE COURT REPORTER: [1] 151/10
THE COURT: [138] 5/11 5/14 5/16 5/18 5/21 5/24 12/22 16/18 17/16 17/19 17/25 18/12 18/20 18/22 20/2 21/19 22/14 22/19 23/22 24/13 24/21 25/11 25/21 26/4 27/4 27/15 28/10 28/14 30/21 34/18 35/16 35/18 36/12 36/18 37/8 38/2 38/20 40/3 40/11 40/14 42/2 45/11 45/19 45/21 45/25 49/1 49/9 49/13 51/17 51/20 52/10 53/3 53/5 53/16 53/22 54/15 54/18 55/1 61/11 64/21 68/3 70/23 72/7 72/13 75/12 76/5 76/8 78/15 78/17 80/19 82/23 83/2 87/8 87/19 89/7 90/13 91/3 91/10 93/19 94/10 95/1 102/22 103/9 103/19 103/22 113/24 114/8 114/22 125/6 129/17 129/24 135/21 136/25 137/16 138/22 140/4 140/6 140/11 142/6 144/2 145/12 149/4 149/12 149/22 150/7 150/13 150/18 151/6 151/11 151/16 153/20 154/2 154/5 154/9 158/2 158/6 159/16 167/20 168/7 169/15 169/19 170/5 172/24 173/2 179/23 180/11 180/23 181/14 181/20 181/25 182/4 182/8 182/17 182/20 182/22 183/3 183/5 183/10

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\$162,000 [1] 88/19

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1010 [1] 96/11

1010.10 [2] 97/5 102/3

105 [1] 120/13

106 [1] 104/18

10:00 [1] 183/8

11 [1] 17/16

11 percent [1] 59/19

11.4 percent [1] 132/9

115 [1] 106/3

116 [1] 100/12

117 [4] 100/16 100/22 101/2 122/1

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